STUDIES IN CONSTITUTIONAL LAW

CITIZENSHIP

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STUDIES IN CONSTITUTIONAL LAW

A TREATISE

ON

AMERICAN CITIZENSHIP

BY

JOHN S. WISE
OF THE NEW YORK BAR

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INTRODUCTORY.

This book was prepared at the solicitation of the publishers, but in obedience to a long-cherished wish to see the discussion of the origin, nature, and obligations of American citizenship, state and national, reduced to compendious form in one volume. The subject is not only one concerning which the legal profession should have a convenient text-book, but is an indispensable part of the education of every man who makes pretension to a fair education and knowledge of the history of his country.

I have, I may say without vanity, had unusual need for the study of all these questions, for as I grew up they were the great points of difference between our people. As they were settled one by one, I studied the reason and argument of the decision, and later in life questions of citizenship and suffrage have been involved in many of the cases I have tried.

It is not believed that this is a perfect book, nor is it doubted that in time it will be supplanted by another or others dealing more ably with the subjects discussed and grouping them more conveniently, but for the present, at least, it is hoped that it will supply, as no other text-book known to the author does, the basis for special lectures on this most important topic in our law schools, and a convenient key for references to the active members of our profession.

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It is believed that in it will be found every decision of the Supreme Court upon the questions discussed.

No effort has been made to pad the volume with the arguments *pro* and *con* upon points decided, or to cite opinions on the same point, distinguishing one case from another.

The principles decided have been given their appropriate places. The discussions concerning why one case decided did not fall within the principle decided by another case, have been purposely omitted as tending to make a volume of case law as distinguished from one of legal principles. Such discussions tend to befog the legal principle decided rather than make it plain, and to weary even the professional man. They must be encountered when the authorities cited are examined.

The whole object of the author has been attained if he has succeeded in putting the origin, nature, and obligations of the citizen in form sufficiently attractive to enlist a more widespread understanding among educated Americans of their rights and obligations as American citizens; for the present ignorance of our people and the confusion in their apprehension of the subject would be something incredible in older countries.

In the hope that the need of the book is real, and not imaginary, that it may be accepted in a spirit of charity, and that some one better equipped may soon arise to improve upon it, it is respectfully submitted to the profession and to the public.

JOHN S. WISE.

New York.

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A TREATISE ON AMERICAN CITIZENSHIP.

CHAPTER I.

OF CITIZENSHIP GENERALLY.

Origin and nature of citizenship.

IT is not proposed, in this work, to cast back in the history of government, to the ethnic origin of the terms citizen and citizenship, or to institute any comparisons between the grade or quality of citizenship enjoyed by those who are subject to the jurisdiction of the United States, or the States composing it, and that possessed by citizens of other governments, ancient or modern. Such researches and comparisons, however interesting they might prove, would be almost endless, and, in a book of this character, would tend to divert the student from a study of the origin and nature of American citizenship, national and state, without shedding any practical light upon the real question to which the volume is addressed.

We shall therefore proceed to ascertain the origin and define the nature and quality of citizenship enjoyed by individuals who are subject to the jurisdiction of the United States, either as citizens of the United States, or as citizens of some particular component State, Territory, or possession of the United States.

Chapter I.

Definition of Citizenship.

Status of the citizen.

The latest approved definition of the term citizenship is that found in the Standard Dictionary (1898), which describes it as "the status of a citizen with its rights and privileges."[1] The status of a citizen implies the existence of —

(1) A political body established to promote the general welfare and collective, as well as individual, rights of those composing it.

(2) Individuals who have established, or submitted themselves to the dominion of, that political body.[2]

(3) Such benefit from, or participation in, the administration of that political body by the individuals composing it, that they may be designated as citizens, and not as mere subjects of a despot or an absolute monarch under whom they have no voice in administration.

The same authority above quoted defines a citizen as "a member of a nation or sovereign state, especially a republic; one who owes allegiance to a government and is entitled to protection from it." That definition is broad enough to make every subject a citizen of the government to which he owes allegiance, and from which he receives protection;

[1] See also Webster's Dictionary; Century Dictionary; 6 Am. and Eng. Encyc. of Law (2d ed.) 15; Abrigo *v.* State, (1890) 29 Tex. App. 149.

[2] "Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights." U. S. *v.* Cruikshank, (1875) 92 U. S. 542.

but the term citizen, as it is commonly understood, implies membership of a political body in which the individual enjoys popular liberty to a greater or less degree.[3] It does not necessarily follow from this definition, that the grade or quality or privileges of citizenship must be identical in all citizens, even in republican governments. In the Roman government, a citizen might or might not be invested with all the civil privileges of the government.[4] In many cases arising under our system, it has been repeatedly decided that the bestowal of political privileges upon an individual is not essential to constitute him a citizen.[5]

[3] For the purpose of designating by a title the person and the relation he bears to the nation, "the words 'subject,' 'inhabitant,' and 'citizen' have been used, and the choice between them is sometimes made to depend upon the form of the government. 'Citizen' is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States." Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162.

"The word is never used of the people in a monarchy, since it involves an idea not enjoyed by subjects, to wit: the inherent right to partake in the government. The republics of the Old World were cities, and the word citizen has been usually in human history only applied to inhabitants of cities. As, however, states have in modern times arisen, and republics have been established, in which the word subjects could not be properly applied, the people of those republics have been called citizens, for the simple and obvious reason that their relation to the state was such as was the relation of citizens to the city. They were a part of its sovereignty — they were entitled to its privileges, its rights, immunities and franchises. White *v.* Clements, (1896) 39 Ga. 232.

[4] Thomasson *v.* State, (1860) 15 Ind. 449; Amy *v.* Smith, (1822) 1 Litt. (Ky.) 332.

[5] 6 Am. & Eng. Encyc. of Law, 15 and cases cited; Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162; Lyons *v.* Cunningham, (1884) 66 Cal. 42; Blanck *v.* Pausch, (1885) 113 Ill. 60; Laurent *v.* State, (1863) 1 Kan. 313; Opinion of Justices, 44 Me. 507; Pomeroy's

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Ordinarily the term citizen, applied to the individual unit in any government, implies that he enjoys a greater degree of participation in the affairs of his government than would be implied if he were referred to as a subject.

Contrasted with subjects.

In a constitutional monarchy like Great Britain, the individual units composing it are referred to indifferently as citizens or as subjects. In an absolute monarchy like Russia, the idea of subjection to the ruler overshadows that of citizenship, and the individual subject is seldom referred to as a citizen, except in diplomatic intercourse between his government and other nations.

In a free democracy like the United States, where there is no sovereign and no subject, the units composing the political body are properly designated as citizens. This subject is discussed in a most interesting way by the Supreme Court of the United States in the case of *Minor v. Happersett.*[6]

American Citizenship — Its Origin and Kinds.

Under colonial rule.

In the seventeenth and eighteenth centuries, the British government planted or acquired thirteen distinct colonies on the continent of North America, and governed them, prior to July 4, 1776, under the system of English laws as applied by the colonial policy of Great Britain, with George III as a constitutional monarch. Each of these colonies had

Municipal Law, pt. 11, c. 2, p. 425; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 422; U. S. *v.* Morris, (1903) 125 Fed. Rep. 325; Dorsey *v.* Brigham, (1898) 177 Ill. 258, 69 Am. St. Rep. 232; Gougar *v.* Timberlake, (1897) 148 Ind. 41, 62 Am. St. Rep. 489.

[6] (1874) 21 Wall. (U. S.) 162; see also The Pizarro, (1817) 2 Wheat. (U. S.) 227.

been founded or acquired separately and at a different time, and each was governed under its own distinct charter or commission. The inhabitants of all the colonies were British citizens or subjects. The several local governments, under which the colonies respectively conducted their domestic affairs, were not independent political societies, of which they might be said to be citizens. While they were inhabitants of their respective colonies, they were citizens of Great Britain, and their local governments were mere dependencies, acting under concessions from the parent government. A comparison of the several colonial administrations of these colonies will make plain at once how different were their several domestic administrations. The colonial organization of Massachusetts was altogether different from that of Maryland; that of Virginia altogether different from that of Rhode Island. The charters of the colonial organizations of South Carolina and New York had little resemblance to each other, and so on with all the colonies.

British citizenship of colonies.

The mother country, while exacting paramount allegiance to herself from all her colonies, had, in her dealings with them, permitted each to indulge its idiosyncrasies in matters of local concern, with so little regard to uniformity of administration, that the thirteen colonies grew up with little of similitude in their charter rights, and little in common in their local forms of government. What they had in common was their British citizenship, and their common grievances against the parent government, which, as they conceived, had deprived them of the right of local self-government. This British citizen-

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ship, in common, was the germ of their united action, and afterwards became the foundation of a new citizenship, known as American citizenship, on which all citizenship, whether of the United States, or of the States and Territories and possessions subject to its jurisdiction, now rests. And this brings us to —

State Citizenship.

Effect of Declaration of Independence.

The thirteen independent American colonies, by a joint Declaration of Independence dated July 4, 1776, asserted their common purpose to maintain that they were free, independent, and sovereign States. That declaration, if it could be successfully maintained, carried with it as a result, that their respective inhabitants were no longer citizens or subjects of Great Britain, but were thenceforth citizens of the States in which they respectively resided. England resisted this contention until September 3, 1783, at which time she entered into a definitive treaty of peace with the representatives of these colonies, recognizing the colonies, name by name, as free, independent, and sovereign States.

New State constitutions.

After thus gaining their independence, some of the States proceeded to adopt new constitutions forthwith, conforming their government to their changed conditions; while others found their royal charters so well adapted to a free government, that they continued to live under them for many years. The most remarkable instance of this is the State of Rhode Island, which continued to govern itself under the forms of its royal charter until the year 1843. Even then, the attempt to adopt a new con-

stitution resulted in a domestic conflict, familiarly known as Dorr's Rebellion, for a full account of which see the opinion of the Supreme Court in the case of *Luther v. Borden.*[7]

League among colonists.

While the revolutionary struggle lasted, the colonies, calling themselves States, co-operated with each other through the device of a league under the name of the United States, represented by a Continental Congress. The objects for which this league and congress were created, were to assert and prosecute measures in common for attaining the independence of the States. Through this league, they also bound themselves by mutual obligations, not to negotiate for peace, or for any other purpose, with the parent country, save through the appointees of the Continental Congress; and the peace which was finally negotiated was brought about by a treaty entered into on behalf of the United Colonies, by commissioners appointed by the Continental Congress.

Citizenship recognized by Great Britain.

But the independence demanded by the colonies and the citizenship recognized by Great Britain were the independence and citizenship of thirteen sovereign and independent States, and not of any one national political body. This could not have been otherwise, for the words "United States," while they were employed in the Declaration of Independence and in the Articles of Confederation under which the revolutionary struggle was conducted, were manifestly used in a plural sense, as expressing the States united, and the compact entered into between the colonies shows, upon its face. that it was

[7] (1849) 7 How. (U. S.) 1.

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not entered into to create a new political body reaching or operating upon the unit of the citizen. All the powers possessed by the confederated government were derived from and to be exercised upon and through the legislatures which created it, representing States and not individuals. Any effort of the federal authority to command or enforce allegiance to it directly from the citizens of those States, save in a few particulars provided for in the Articles of Confederation, would have aroused indignant protests from the States, and would, perhaps, have resulted in a dissolution of the confederacy.

The date insisted upon by the thirteen States, as that at which their inhabitants ceased to be colonial subjects of Great Britain, and became citizens of their respective States, was July 4, 1776. The English authorities, on the other hand, fixed September 3, 1783, the date of the definitive treaty acknowledging the independence of the States, as the true date from which to reckon.[8] This question has long since ceased to be of any importance as bearing upon any property rights, and in so far as it relates to whether State citizenship antedated national citizenship, it makes no difference which date is assumed to be correct; for the relations of the States to the federal compact were substantially the same in 1776 as in 1783.

Under the Articles of Confederation.

The Declaration of Independence affirmed that the United Colonies ought to be free and independent States. The Articles of Confederation were agreed upon by delegates November 15, 1777. After announcing a name for the confederacy between the

[8] Inglis *v.* Sailor's Snug Harbour, (1830) 3 Pet. (U. S.) 121.

States, it proceeded to declare that each State retained "its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled." The Congress was composed of delegates chosen annually, as State legislatures might direct, and the delegates were maintained by the States. In determining questions in the Congress, each State had one vote. The duty of raising their respective quotas of troops was imposed upon the States, and the privilege of naming all officers of or under the rank of colonel. The States undertook to supply all funds to the common treasury, and the taxes for defraying the expenses of the confederacy were to be laid and levied by the State legislatures, each State paying her proportion. There was no president or common ruler over the confederacy of States, and the limited federal authority conferred upon Congress by the Articles of Confederation was intrusted to the control and direction of a committee of Congress.

Such was the confederacy existing between the States when Great Britain acknowledged them as independent sovereign States. It requires little argument to demonstrate that a mere agency such as this, operating under a limited authorization and without any power to levy taxes or draft troops, was not a political body entitled to claim that any individual was its citizen, and while State citizenship necessarily followed at once to the inhabitants of the colonies, respectively, upon the acknowledgment of their independence, no citizenship of the United States was recognized or even existed.

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A new citizenship proposed — The Federalist.

The writings of Mr. Hamilton and Mr. Madison, preserved in The Federalist, written long after the acknowledgment of the independence of the colonies, are full of complaints against the Articles of Confederation, on this score. They are appeals for a change from this condition, and urge upon the people to remedy these defects by adopting the proposed constitution and creating the new citizenship. The Constitution of the United States was proposed September 17, 1787, and the operations of the government began under it March 4, 1789. The Federalist papers were written in that interval, urging the adoption of the Constitution by the States. In the fifteenth paper of The Federalist,[9] Mr. Hamilton discusses "the insufficiency of the present confederation to the preservation of the Union," as follows:

"The great and radical vice in the construction of the existing confederation is the principle of legislation for states or governments, in their corporate or collective capacities, and as contradistinguished from the individuals of which they consist. . . . Except as to the rule of appointment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that although in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option. . . . If we still adhere to the design of a national

[9] The Federalist (Lodge, 1892), p. 86.

government . . . we must extend the authority of the Union to the persons of the citizens — the only proper objects of government."

Again, in the twenty-third paper [1] the same illustrious authority declared: "If we are in earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America."

Real citizenship was of States.

The above citations, which are but two of many, are sufficient to demonstrate that under the peculiar organization of the United States, as it was originally formed, the powers or authority of the general government did not extend to individuals, save in a few isolated instances, and that consequently the only real citizenship was that of States. Mr. Hamilton, in both his references to citizens, spoke of them, not as citizens of the United States, but as citizens of America, doubtless adopting that form of expression as more correct in describing the citizens of the States generally.

Beginning of Federal citizenship.

Until the ratification of the Constitution of the United States by nine States, it was a nullity. New Hampshire was the ninth State to ratify. The date of its action was June 21, 1788. Virginia and New York ratified the Constitution a few days later, and before the date fixed for commencing the operations of the government. Thus, for the first time, there was such a thing as citizenship of the United States. That citizenship did not extend to North Carolina until January 28, 1790, or to Rhode Island until June

[1] The Federalist (Lodge, 1892), p. 137.

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1, 1790, for those States delayed their ratifications until after the operations of the government had begun.

In the United States custom house at New York, one may see a list of the vessels which entered the port of New York during the first year after the Constitution of the United States went into effect, and in that list, entered as vessels arriving from "foreign ports," are several ships from Rhode Island.

Thus we see that, in eleven of the original States, State citizenship antedated Federal citizenship over five years, and in two other States nearly seven years.

Interim between independence and the Constitution.

Speaking of the interim between the acknowledgment of the independence of the colonies and the adoption of the Constitution, John Fiske, in his History of the United States, says:[2] "Perhaps the only thing that kept the Union from falling to pieces in 1786 was the Northwestern Territory, which George Rogers Clark had conquered in 1779, and which skilful diplomacy had enabled us to keep when the treaty was drawn in 1782. Virginia claimed this territory and actually held it, but New York, Massachusetts, and Connecticut also had claims upon it. It was the idea of Maryland that such a vast region ought not to be added to any one State, or divided between two or three of the States, but ought to be the common property of the Union. Maryland had refused to ratify the Articles of Confederation until the four States that claimed the Northwestern Territory should yield their claims to

[2] Edition 1900.

the United States. This was done between 1780 and 1786, and thus, for the first time, the United States government was put in possession of valuable property which could be made to yield an income and pay debts. This piece of property was about the first thing in which all the American people were alike interested, after they had won their independence."

Paramount allegiance.

In the light of the above historical facts, it is not strange that the discussions, prior to the great Civil War, on the question whether paramount allegiance was due to their State, or to their Nation, by the citizens of the States respectively, led to a difference of opinion on that question between citizens.

Citizenship of the Northwest Territory.

Ordinance for government of Northwest Territory.

The United States, as constituted under the Articles of Confederation, having come into possession of the large unsettled territory above referred to, by the cession of Great Britain and the subsequent cession of their rights by the several States which laid claim to it, the Continental Congress undertook to pass, in 1787, the famous ordinances laying down certain fundamental laws for the government of that territory, and in States which might thereafter be formed out of that territory. The States of Ohio, Indiana, Illinois, Michigan, and Wisconsin were subsequently erected and admitted into the Union, and those five embrace what was then known as the Northwest Territory.

Of the action of the Continental Congress in assuming to pass these ordinances, Mr. Madison says in the thirty-seventh paper of The Federalist,[3] that

[3] Lodge, 1902, p. 231.

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in proceeding to form new States, to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such States should be admitted into the confederacy, the Congress acted "without the least color of constitutional authority." The justification for this action stated by him was: "The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits." From this necessity of violating the constitutional authority, he proceeded to argue: "But is not the fact an alarming proof of the danger resulting from a government which does not possess regular powers commensurate to its objects? A dissolution or usurpation is the dreadful dilemma to which it is continually exposed."

Power of Continental Congress.

Whether the Continental Congress did or did not possess power to enact the ordinances of 1787, the necessity that some one should take steps to that end was manifest to every one, and the action of the Continental Congress was not only acquiesced in by all the States, but the ordinance has come down to posterity as one of the wisest charts of government ever framed. This territory had come into the possession of the United States under the following circumstances:

Settlement of the territory.

When the treaty of peace was negotiated between England and the United States, the boundary lying between the English possessions and the country whose independence was acknowledged, was fixed as running through the centres of Lakes Ontario, Erie, Huron, and Superior, and thence westward through the Lake of the Woods to the Mississippi, whereby the vast and rich domain lying between the Great

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Lakes and the Ohio and Mississippi rivers became a part of the country acknowledged as independent. Settlers rapidly flocked to that territory, and conditions there called for the organization of some sort of political body for its government. Neither the Federal government, nor the State of Virginia, had been able to discharge their debts to Revolutionary soldiers, and Virginia, before the cession of her territory to the United States, had issued many military land grants in this territory to her soldiers. When the Continental army at Newburg threatened to march upon Philadelphia in the year 1783, because it had not been paid, its violence was allayed by the assurances of General Washington that he would do all in his power to induce the government to make provision for discharging its obligations to the soldiers, in part at least, by military land grants in the Northwest Territory. Pursuant to that pledge, Congress did make large land grants in the Northwest Territory, in that portion now known as Ohio, to Revolutionary soldiers. After the armies were disbanded, large colonies of people from the original States promptly settled in the Ohio territory, under the leadership of Paul Carrington of Virginia, and General Rufus Putnam of Connecticut, and thus it came about that at the time of the passage of this famous ordinance, a considerable and representative body of unorganized people were in occupancy of the Northwest Territory, demanding some form of government and some right of representation.

The Ordinance as a compact.

The ordinance passed by the Continental Congress, pursuant to this urgency, announced certain fundamental articles, which were to rest upon any

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and all governments formed in the territory, and declared that the obligation to adopt these fundamental principles should be regarded as a compact between the original States and the people and States in said territory, and that, having been adopted, they should forever remain unalterable, unless by common consent.

It will be noted, that Congress was so doubtful of its own powers, that it made the compact obligatory, not between the United States and the people of this territory, but between the original States and the people.

Political rights and citizenship under the Ordinance.

It is unnecessary to enumerate at length the fundamental principles laid down for the government of the Northwest Territory.[4] The Act provided for the erection of the territory into a district; for a law of descents; and for a form of civil government, under a governor and secretary appointed by Congress. It gave the people of the territory the right to elect a general assembly by popular election. In prescribing the qualifications of a candidate, and of voters, it required that they should have been *citizens of one of the United States* for a certain time. It gave the territorial legislature the right to elect a delegate to Congress, who was to possess a seat with the right of debate, but no vote. Without going into further details of this government, it is sufficient to say that it was acceptable to the people and a remarkable spectacle of government. For the United States, which had no citizens of its own, undertook to

[4] See the text of the Ordinance in Vol. 8, Federal Statutes, Annotated, p. 17.

create and erect a government of citizens, and to prescribe, to the minutest detail, their obligations of citizenship. It is inconceivable that the Continental Congress would have made the qualifications of candidates and voters depend on their citizenship of one of the original States, if there had been such a thing at the time as citizenship of the United States. The only reference in the Ordinance of 1787 to "citizens of the United States" is in Article IV. That is manifestly a reference to conditions *in futuro,* made with the knowledge that the Constitution was then in process of formation and likely to be adopted, whereby citizens of the United States would come into existence.

Thus we have the second class of American citizenship, to wit, citizenship of the Northwest Territory, both of which classes of citizenship antedated citizenship of the United States.

Citizenship of the United States.

Ratification of Constitution.

When the Constitution was ratified by nine of the States composing the old confederacy, and not until then, was there an actual and real citizenship of the United States, however much the term may have been theretofore loosely employed. The States ratified the Constitution in the following order:

1. Delaware, December 7, 1787;
2. Pennsylvania, December 12, 1787;
3. New Jersey, December 18, 1787;
4. Georgia, January 2, 1788;
5. Connecticut, January 9, 1788;
6. Massachusetts, February 6, 1788;
7. Maryland, April 28, 1788;

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8. South Carolina, May 23, 1788;
9. New Hampshire, June 21, 1788.

The Constitution provides, Article VII, that the ratification of the conventions of nine States should be sufficient for the establishment of the Constitution between the States so ratifying the same. The Constitution became an established form of government June 21, 1788, in nine States, and the remaining States, Virginia, New York, North Carolina, and Rhode Island, when they ratified it, came into a government already established. This attitude of Virginia and New York was a technical rather than an actual delay, for Virginia ratified the Constitution June 26, 1788, and New York July 26, 1788, and the operations of the government under the new Constitution did not begin until March 4, 1789.

A new government and new class of citizens.

The radical changes in the form of the federal compact altered the status of the people subject to its jurisdiction, so that, whereas they had theretofore been only citizens of the States, they now became also citizens of the United States.[5] The first of these organic changes was the provision of Article VI, Clause 2, of the Constitution, which declared the laws of the United States made pursuant thereto,

[5] "Every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body." Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 406.

"Whoever . . . was one of the people of either of these States when the Constitution of the United States was adopted, became *ipso facto* a citizen — a member of the nation created by its adoption. He was one of the people associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were." Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162.

and all treaties made under its authority, to be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding.

In the next place, the government created by the Constitution was clothed with ample powers, independent of the States, to maintain itself, and to reach, command, direct, and, if need be, to punish, every individual subject to its jurisdiction.

Without going into an enumeration of those powers, it is sufficient to say that the government created by the Constitution became a government with citizens of its own, and was no longer a mere government over States.

Reference to citizenship in Constitution.

Yet radical as was this change in the nature and constitution of the federal government, the new citizenship is referred to only three times in the entire instrument, as it was originally framed, and then only incidentally. The first reference is in Article I, Section 2, Paragraph 2. In describing the qualifications of a member of the House of Representatives, one of the qualifications was declared to be, that he should have been "seven years a citizen of the United States." The second reference is in Article I, Section 3, Clause 3, which makes one of the qualifications of a senator, that he should have been "nine years a citizen of the United States." The third reference is in Article II, Section 1, Clause 5, which enacted that "no person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President."

If these requirements had been literally con-

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formed to, there could have been no election for representatives to Congress for seven years after the adoption of the Constitution, and no one would have been eligible as a senator for nine years thereafter. The language employed by the convention was less careful than that which had been used by Congress in July of the same year, in framing the ordinance for the government of the Northwest Territory. Congress had made the qualification rest upon citizenship of "one of the United States," and this was doubtless the intent of the convention which framed the Constitution, for it cannot have meant anything else.

Who were citizens under new Constitution.

The silence of the Constitution and its failure to define the meaning of the word citizen, either by way of inclusion or exclusion, has been the subject of much judicial comment.[6] Perhaps the best expression concerning it is that of the Supreme Court of the United States, when it declares: "In this respect, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution."[7]

[6] Prior to the 14th article of amendment to the Federal Constitution no definition of the term "citizenship" was to be "found in the Constitution, nor had any attempt been made to define it by Act of Congress. It had been the occasion of much discussion in the courts, by the executive departments, and in the public journals." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 72.

[7] U. S. *v.* Wong Kim Ark, (1897) 169 U. S. 654.

"The term 'citizen' was used in the Constitution as a word, the meaning of which was already established and well understood. And the Constitution itself contains a direct recognition of the subsisting common-law principle, in the section which defines the qualification of the President: 'No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President,' etc. The

In the famous case of *Dred Scott v. Sandford,*[8] it was said that the words "people of the United States" and "citizens" are synonymous terms; that they "describe the political body which, according to our republican institutions, forms the sovereignty which holds the power and conducts the government through its representatives."

Sundry opinions of the attorney-generals of the United States are to the same effect. In one of these, rendered in 1862, it is said: "The Constitution of the United States does not declare who are and who are not citizens, nor does it attempt to describe the constituent elements of citizenship; it leaves that quality where it found it, resting on the fact of home birth and upon the laws of the several States."[9]

It was not difficult to ascertain, on the principles above announced, who were citizens of the United States under the original Constitution. The citizens of Vermont and Kentucky, when those States were admitted, assumed their relations to the Union as naturally as did those of any of the original States. So, also, the citizens of the region now constituting

only standard which then existed of a natural born citizen was the rule of the common law, and no different standard has been adopted since." Lynch *v.* Clarke, (1844) 1 Sandf. Ch. (N. Y.) 656.

"The term 'citizen,' as understood in our law, is precisely analogous to the term *subject* in the common law, and the change of phrase has entirely resulted from the change of government. The sovereignty has been transferred from one man to the collective body of the people — and he who before was a 'subject of the king' is now 'a citizen of the State.'" State *v.* Manuel, (1838) 4 Dev. & B. L. (N. Car.) 26, quoted U. S. *v.* Rhodes, (1866) 1 Abb. (U. S.) 39, 27 Fed. Cas. No. 16,151.

[8] Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393.

[9] Citizenship, (1862) 10 Op. Atty.-Gen. 382.

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five great States erected in the Northwest Territory became citizens of the United States the instant the Constitution was adopted.[1]

Government of Territories. Inhabitants as citizens.

By the Constitution, power was given Congress (Article IV, Section 3, Clause 2) to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. Under this power, the process of governing the Territories and organizing them into States was simplified.[2]

[1] Admission on an equal footing with the original States, in all respects whatever, involves equality of constitutional right and power, which cannot afterwards be controlled, and it also involves the adoption as citizens of the United States of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new State with the consent of Congress. Boyd *v.* Thayer, (1891) 143 U. S. 143.

[2] M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 316; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; U. S. *v.* Gratiot, (1840) 14 Pet. (U. S.) 526; U. S. *v.* Rogers, (1846) 4 How. (U. S.) 567; Cross *v.* Harrison, (1853) 16 How. (U. S.) 164; U. S. *v.* Coxe, (1855) 18 How. (U. S.) 100; Gibson *v.* Chouteau, (1871) 13 Wall. (U. S.) 92; Clinton *v.* Englebrecht, (1871) 13 Wall. (U. S.) 434; Beale *v.* New Mexico, (1872) 16 Wall. (U. S.) 535.

"The Constitution of the United States (article four, section three) provides, 'That Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States.' The term territory, as here used, is merely descriptive of one kind of property; and is equivalent to the word lands. And Congress has the same power over it as over any other property belonging to the United States; and this power is vested in Congress without limitation; and has been considered the foundation upon which the territorial governments rest." U. S. *v.* Gratiot, (1840) 14 Pet. (U. S.) 537.

The Constitution empowers Congress "to make all needful rules and regulations, respecting the territory or other property belonging to the United States; and perhaps the power of governing a territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts, that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable conse-

By easy transition the territory acquired from France, known as the Louisiana Territory, and the Florida cession from Spain, and the territory acquired from Mexico by conquest, were first governed territorially. Under these territorial governments the inhabitants made their first attornment as citizens of the United States to the Federal authority, and when the States created from this territory were organized and admitted, they assumed their obligations of dual citizenship to State and Nation, of a nature and a quality identical with that of citizens of the old States.

Besides these citizens, who became such in a body, a vast number of citizens of the United States were created under the powers of naturalization conferred upon Congress by the Constitution.

Among the first powers conferred upon Congress by Article I, Section 8, Clause 4, was "to establish a uniform rule of naturalization."[3]

Laws were passed, and the naturalized citizens admitted under these laws distributed themselves

quence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned." *Per* Chief Justice Marshall in American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511. To the same effect, Sere *v.* Pitot, (1810) 6 Cranch (U. S.) 332.

[3] Gassies *v.* Ballon, (1832) 6 Pet. (U. S.) 761; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Minneapolis *v.* Reum, (C. C. A. 1893) 56 Fed. Rep. 580. See also the notes on the Constitution dealing with this subject in Vol. 8, Federal Statutes, Annotated, p. 579.

"The Constitution declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. . . . It made all alike, citizens of the newly organized nation, and in this respect a homogeneous people. And the very necessity for such a provision to bring all upon a common platform, exhibited in the strongest light the absolute need of guarding against different and discordant rules for establishing the right

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among the several State or Territorial communities of which they became members. But it did not follow as a necessary consequence that a naturalized citizen of the United States became also a citizen of any State or Territory.

Representation in Congress—white and black inhabitants.

The original Constitution remained unchanged concerning citizenship, from 1789 until July 28, 1868, when the Fourteenth Amendment to the Constitution was adopted. Before entering into a discussion of the effect upon citizenship, and the manner of enforcement, of that amendment, a brief historical statement is necessary.

Even prior to the adoption of the Constitution, sectional jealousies existed between the States. The basis of representation in the national Congress was a fruitful source of controversy between them. The population of the northern colonies was almost exclusively white and free, whereas that of the southern colonies consisted, to a large extent, of black slaves. The extent to which this black population was to be considered in arranging a basis of representation gave rise to many of the controversies between the sections, at the outset.

The basis of representation in Congress fixed by the Constitution, Article I, Section 2, Clause 3, apportioned representatives among the several States according to their respective numbers, which were to be determined by adding to the whole number of free persons, three-fifths of all other persons, exclusive of Indians not taxed.

of citizenship in future. We therefore find that one of the first powers conferred upon Congress was 'to establish an uniform rule of naturalization throughout the United States.'" Lynch *v.* Clarke, (1844) 1 Sandf. Ch. (N. Y.) 641, 642.

The Constitution conferred power on Congress to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States.[4] It likewise conferred upon Congress the power to admit new States into the Union.[5]

The Constitution contained a provision that no person held to service or labor in one State, under the laws thereof, escaping into another State, should in consequence of any law or regulation therein be discharged from such service or labor, but that he should be delivered up on claim of such party to whom such service or labor might be due.[6]

[4] Const., Art. IV, Sec. 3, Cl. 2; M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 316; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; U. S. *v.* Gratiot, (1840) 14 Pet. (U. S.) 526; U. S. *v.* Rogers, (1846) 4 How. (U. S.) 567; Cross *v.* Harrison, (1853) 16 How. (U. S.) 164; U. S. *v.* Coxe, (1855) 18 How. (U. S.) 100; Gibson *v.* Chouteau, (1871) 13 Wall. (U. S.) 92; Clinton *v.* Englebrecht, (1871) 13 Wall. (U. S.) 434; Beall *v.* New Mexico. (1872) 16 Wall. (U. S.) 535; Davis *v.* Beason, (1890) 133 U. S. 333; Wisconsin Cent. R. Co. *v.* Price County, (1890) 133 U. S. 496; Cope *v.* Cope, (1891) 137 U. S. 682; Church of Jesus Christ *v.* U. S., (1890) 136 U. S. 1; Dooley *v.* U. S., (1901) 182 U. S. 222; Downes *v.* Bidwell, (1901) 182 U. S. 244; Dooley *v.* U. S., (1901) 183 U. S. 151.

[5] Const., Art. IV, Sec. 3, Cl. 1; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; Pollard *v.* Hagan, (1845) 3 How. (U. S.) 212; Cross *v.* Harrison, (1853) 16 How. (U. S.) 164.

[6] Const., Art. IV, Sec. 2, Cl. 3; Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 539; Jones *v.* Van Zandt, (1847) 5 How. (U. S.) 215; Strader *v.* Graham, (1850) 10 How. (U. S.) 82; Moore *v.* Illinois, (1852) 14 How. (U. S.) 13; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Ableman *v.* Booth, (1858) 21 How. (U. S.) 516; Callan *v.* Wilson, (1888) 127 U. S. 540; Nashville, etc., R. Co. *v.* Alabama, (1888) 128 U. S. 96.

"Historically, it is well known that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves, as property, in every State in the Union into which they might escape from the State where

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Interests and views of North and South.

The relative strength of the sections North and South was altogether different at that time from what it is at present; even the white population of the southern States, in which slavery existed, as compared with that of the northern States, where slavery did not exist, was proportionately larger than it is at present, and on the basis set forth above the northern States were jealous of the preponderance of representation given to the southern States. It was argued by those opposed to the Constitution in the North, that it placed the northern States, especially the small ones, at the mercy of the southern States, in the Union. It was this argument, no doubt, that made Rhode Island reluctant to become a member of the Union. On the other hand, the southern States realized that the population of the North was growing much more rapidly than that of the South, and that it was spreading into the Territories and would demand that those Territories be formed into new States and admitted into the Union as free States. It was argued by those opposed to the Union in the South, that such a result was inevitable; that in a short time the slaveholding States would be dominated by the free States of the North and West, and that they, by the control thus gained in Congress over the Territories and concerning the

they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevalent in the non-slaveholding States, by preventing them from intermeddling with, or obstructing, or abolishing the rights of the owners of slaves." Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 611.

admission of free States, would put the slave States at the mercy of the free States in federal affairs. It was doubtless by arguments like this, that North Carolina was restrained so long from becoming a member of the Union.

Antagonism between sections.

The Constitution contained no definite expression upon the right of the States to withdraw from the Union if they became dissatisfied. In spite of many attempts to have that right defined, the convention refused to do so.

These conditions gave rise from the outset to such antagonism between the sections, that it was found impossible to procure the assent of Congress to the admission of new States, except in couplets, one with and one without slavery. This method of admitting States began with the States of Vermont and Kentucky, and continued until the controversies over the regulation of slavery in the Territories, the returning of fugitive slaves, and the right of States to secede, culminating in an attempt in the year 1861, on the part of the slave States, to withdraw from the Union, and a consequent civil war, in which the northern States were triumphant.

The Dred Scott decision.

While the controversy over slavery was at its height, a case was decided by the Supreme Court of the United States, in which the status of the negro race, under the Constitution, was defined.[7] The decision was rendered in the year 1857, and the question involved was deemed to be of such importance that the opinions delivered occupied two hundred and forty pages of the volume in which they appear. The points relating to citizenship decided by the

[7] Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393.

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Supreme Court, in an opinion of great power delivered by Chief Justice Taney, were: "A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States. . . . When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its 'people or citizens.' Consequently the special rights and immunities guaranteed to citizens do not apply to them. . . . The only two clauses in the Constitution which point to this race treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves."

This finally adjudged status of the negro race continued to be the law of the land until it was changed by the following events.

Secession and emancipation.

In December, 1862, the war between the United States and the States which had attempted to secede from the Union, having then been flagrant for nearly two years, with its result still in doubt, the President of the United States issued a proclamation conditionally emancipating all the slaves in the States whose armed forces were opposed to those of the United States. By subsequent proclamations, this conditional emancipation of the slaves was made absolute. The President did not claim to justify this proclamation by any express warrant of the Constitution, but it was claimed by him to be a war measure, legitimate as a means of weakening and injuring an enemy in arms. We need not therefore consider

it further as a measure of law. It was emphatically a measure of the war.

The XIII Amendment.

In April, 1865, the armies of the United States conquered the armies of the States which attempted to secede, and those States, with their people, were at the mercy of the conqueror, subject to such terms as it saw fit to impose. In anticipation of this victory, the Congress of the United States, February 1, 1865, proposed to the legislatures of the several States an amendment, known as Article XIII, in addition to, and amendment of, the Constitution of the United States, in the words and figures following:

"ARTICLE XIII.

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." [8]

Ratification of XIII Amendment.

December 18, 1865, the secretary of state pro-

[8] White *v.* Hart, (1871) 13 Wall. (U. S.) 646; Osborn *v.* Nicholson, (1871) 13 Wall. (U. S.) 654; Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36; Strander *v.* West Virginia, (1879) 100 U. S. 303; Ex p. Virginia, (1879) 100 U. S. 339; Civil Rights Case, (1883) 109 U. S. 3; Plessy *v.* Ferguson, (1896) 163 U. S. 537; Robertson *v.* Baldwin, (1897) 165 U. S. 275.

"When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel. . . . The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of amendment of that instrument." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 68.

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claimed that twenty-seven of the thirty-six States had, by their legislatures, ratified this amendment. This included ratification by the legislatures of the States of Virginia, Louisiana, Tennessee, Arkansas, South Carolina, Alabama, North Carolina, and Georgia, all of which States had attempted to secede, and were completely within the control of the Federal military power at the date of their alleged ratification of this amendment. It has since been claimed that they were under duress at the time of their alleged ratifications, but the Supreme Court of the United States, in the case of *White v. Hart*,[9] considered and disposed of this plea of duress, as it related to the State of Georgia, in a way so effectual that it need not be further referred to.[1]

Changed status of negro.

The negro having thus been emancipated by the power of war, and his status changed from that of a slave to a freeman, it was proposed, for reasons satisfactory to the dominant party, to alter his civil and political status as it had been defined by the case of *Dred Scott v. Sandford.* Accordingly, the Congress of the United States, on January 16, 1866, proposed to the legislatures of the several States the following amendment to the Constitution:

[9] 13 Wall. 646.

[1] The power exercised in putting down the late rebellion is given expressly by the Constitution to Congress. That body made the laws and the President executed them. The granted power carried with it not only the right to use the requisite means, but it reached further and carried with it also authority to guard against the renewal of the conflict, and to remedy the evils arising from it in so far as that could be effected by appropriate legislation. At no time were the rebellious States out of the pale of the Union. Their rights under the Constitution were suspended, but not destroyed. Their constitutional duties and obligation were unaffected and remained the same. White *v.* Hart, (1871) 13 Wall. (U. S.) 651.

"ARTICLE XIV.

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [2]

The XIV Amendment.

The amendment contains three other sections, but none of them refer to citizenship.

Citizenship under XIV Amendment.

July 21, 1868, by a joint resolution of Congress, the Fourteenth Amendment was declared to have been adopted. Not only did it work a revolution in the citizenship of the negro race, but its effect upon United States citizenship, upon the citizenship of

[2] Among the first acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the Federal government, were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value, while they had lost the protection which they had received from their former owners from motives both of interest and humanity. . . . These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced upon the statesmen who had conducted the Federal government in safety through the crisis of the rebellion, and who supposed that by the thirteenth article of amendment they had secured the result of their labors, the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the fourteenth amendment, and they declined to treat as restored to their full participation in the government of the Union the States which had been in insurrection, until they ratified that article by a formal vote of their legislative bodies. Slaughter-House Cases, (1872) 16 Wall. (U. S.) 70.

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States, upon the status of every class of people in the United States, and upon the relations between the United States and the States, has given rise to more discussion, and been the subject of more decisions, than any other part of the Federal Constitution.[3] The Supreme Court of the United States alone has, in a period of thirty-five years, rendered about three hundred decisions on questions arising upon this amendment.

To discuss those decisions at length is impossible within the limits of any one volume. Many of them relate to laws abridging the privileges and immunities of citizens; many to what constitutes due process of law; many to the denial of the equal protection of the laws. A few, defining the reasons which led to the adoption of the amendment, and the effects of the amendment upon the rights of citizens, will suffice in this chapter, while others will be considered when we come to discuss the method by which this defined citizenship may be acquired or protected.

Slaughter-House Cases.

In the *Slaughter-House Cases*,[4] which were the first to arise under this amendment, and in which opinions of unsurpassed ability were rendered, it is said: "This clause declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States."

[3] See the exhaustive collection of authorities in Vol. 9, Federal Statutes, Annotated.

[4] Slaughter-House Cases, (1872) 16 Wall. (U. S.) 73; to same effect see Elk *v.* Wilkins, (1884) 112 U. S. 101; U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 676.

And in the case of *U. S. v. Wong Kim Ark*,[5] it is again said: "The Fourteenth Amendment of the Constitution, in the declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,' contemplates two sources of citizenship, and two only: birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization." "The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, 'All persons born in the United States,' by the addition, 'and subject to the jurisdiction thereof,' would appear to have been to exclude by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state — both of which, as has already been shown, by the law of England, and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country."

[5] U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 682.

Chapter I.

Qualified Citizenship in Territorial and Acquired Possessions.

Citizenship in newly acquired territory.

Recent events, the result of which was not foreseen, have created an entirely new and unprecedented citizenship in the United States. It is the limited and rudimentary citizenship of the inhabitants of our newly acquired territory in Alaska, Porto Rico, the Philippine and the Ladrone Islands, and in Hawaii. The status of those citizens is the result of changed conditions in the territory which they inhabit. The oldest of these possessions is Alaska, purchased by the United States from Russia, and governed as a Territory. The latest expression of the Supreme Court of the United States, defining the status of Alaskan citizenship, is in an opinion delivered April 10, 1905.[6]

Spanish possessions acquired.

In April, 1898, the United States declared war against the Kingdom of Spain, in a quarrel between the two nations concerning the government by Spain of the island of Cuba, a Spanish possession. In May, 1898, the naval forces of the United States invaded the Philippine Islands, another Spanish possession, soon followed by the land forces of the United States. In July, 1898, the military forces of the United States invaded the island of Porto Rico, another Spanish possession. By a protocol dated August 12, 1898,[7] hostilities were suspended between the United States and Spain, upon the understanding that Spain would cede to the United States the island of Porto Rico, and other islands under Span-

[6] Rassmussen *v.* U. S., (1905) 197 U. S. 516

[7] U. S. Stat. at L., Vol. 30, p. 1742.

ish sovereignty in the West Indies, also an island in the Ladrones to be selected by the United States.

Treaties with Spain.

By a treaty dated December 10, 1898,[8] Spain actually ceded to the United States the island of Porto Rico, and the other islands under Spanish sovereignty in the West Indies, and the island of Guam in the Ladrone group, and by the same treaty she ceded to the United States the archipelago known as the Philippine Islands, by boundaries. Provision was made in the treaty for the protection of Spanish subjects, natives of the peninsula residing in the ceded territory, for the protection of the religion of the inhabitants of the territories ceded, and for the protection of certain civil rights. By a treaty dated November 7, 1900,[9] Spain ceded all islands belonging to the Philippine archipelago, lying outside the lines described in the prior treaty, particularly the islands of Sulu and Sibitu.

By a protocol dated March 29, 1900,[1] the period fixed by the former treaty for Spanish subjects to declare their intention to retain their Spanish nationality was extended six months.

Thus, within a year from the outbreak of the war with Spain, the United States acquired all the above-named islands, with many millions of inhabitants, and undertook by Article IX of the Treaty of December 10, 1898, that "the civil rights and political status of the native inhabitants of the territories ceded to the United States shall be determined by the Congress."

Hawaii acquired.

While these events were transpiring the Republic

[8] See U. S. Stat. at L., Vol. 30, p. 1755, 7 Fed. Stat. Annot. 814.
[9] U. S. Stat. at Large, Vol. 31, p. 1942, 7 Fed. Stat. Annot. 819.
[1] U. S. Stat. at Large, Vol. 31, p. 1882, 7 Fed. Stat. Annot. 818.

LIBRARY OF THE UNIVERSITY

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of Hawaii, whose government extended over a group of islands in the Pacific, known as the Hawaiian Islands, formally signified its consent, in the manner provided by its constitution, to cede absolutely and without reservation to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands or their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, government, or crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining. This proposition was presented to the Congress of the United States, and accepted July 7, 1898, by a joint resolution,[2] which provided that "said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America."

Government of Hawaii.

It was further provided that "until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacan-

[2] U. S. Stat. at Large, Vol. 30, p. 750, 3 Fed. Stat. Annot. 183.

cies so occasioned." The municipal legislation of the Hawaiian Islands, subject to certain limitations, was to remain in force until the Congress of the United States should otherwise determine. The United States government assumed the debts of the islands, not to exceed $4,000,000. An act was passed forbidding the immigration of Chinese. The President was required to appoint five commissioners to recommend to Congress such legislation concerning the Hawaiian Islands as they should deem necessary or proper.[3]

Thus it will be seen, that in the year 1898 the United States gained an immense accession of citizenship in territory lying far beyond its original confines, inhabited by people altogether different from those who had constituted its citizens theretofore. It will also be seen, both in the joint resolution accepting sovereignty over the Hawaiian Islands, and in the treaty accepting the cession of the Spanish possessions, that the United States assumed complete authority to govern all the newly acquired territory.

Let us now consider what government it has, up to the present time, provided for these several possessions, an examination essential to an understanding of the grade and quality of citizenship which their inhabitants enjoy.

Hawaii — Its Government.

The Act of April 30, 1900.

Congress, by an Act approved April 30, 1900,[4] passed an Act to provide a government for the Terri-

[3] See title "Hawaiian Islands," in Vol. 3, Fed. Stat. Annot. 181.

[4] U. S. Stat. at Large, Vol. 31, p. 141, 3 Fed. Stat. Annot. 186.

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tory of Hawaii. In Chapter I, Section 4, of that Act, it was set forth that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii; and all citizens of the United States residing in the Hawaiian Islands, and who were residing there on or since August 12, 1898, and all citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year, shall be citizens of the Territory of Hawaii. The fifth section declared that the Constitution and laws of the United States, except such as are locally inapplicable, shall have the same force and effect in the Territory as elsewhere in the United States, with certain specific exceptions.

Hawaiian legislature.

The Act provides for a legislature composed of a senate and a house of representatives, for general elections, and that all legislative proceedings shall be conducted in the English language. It confers a large degree of legislative power upon the legislature, and extends a broad franchise to all inhabitants who are citizens of the United States and have resided in the Territory not less than a year, twenty-one years old, registered, and able to speak, read, and write the English or the Hawaiian language. It provides, however, for the appointment by the President of the United States of a governor, secretary, chief justice and justices of the Supreme Court, and judges of the circuit courts; and that the governor shall nominate, and, by and with the advice and consent of the senate of the Territory appoint, an attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, super-

intendent of public works, superintendent of public instruction, auditor, and other officers; but all the officers appointed under the Act are to be citizens of the Territory. By the terms of the Act, Section 85, the delegate to the House of Representatives of the United States, to serve during each Congress, shall be elected by the voters qualified to vote for members of the house of representatives of the legislature; such delegate shall possess the qualifications necessary for membership of the senate of the legislature of Hawaii. Every delegate shall have a seat in the United States House of Representatives, with the right of debate but not of voting.

From the foregoing recital of the Constitution and government of Hawaii, it will be seen that the government organized in that Territory is very similar in its general characteristics to that organized in the Northwest Territory by the Ordinance of 1787.

Porto Rico.

The Act of April 12, 1900.

Congress proceeded April 12, 1900, to enact a civil government for the island of Porto Rico and adjacent islands.[5] The Act provides that all inhabitants continuing to reside in Porto Rico, who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental

[5] U. S. Stat. at Large, Vol. 31, p. 77, etc., 5 Fed. Stat. Annot. 761.

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powers as conferred in the Act. By Section 14, the statutory laws of the United States not locally inapplicable, except as otherwise provided, and except the internal-revenue laws, are to have the same force and effect in Porto Rico as in the United States. Section 16 provides that all judicial process shall run in the name of the United States, to wit, the President of the United States, and that all penal prosecutions in the local courts shall be conducted in the name and under the authority of the people of Porto Rico, and that all officials authorized by the Act shall take an oath to support the Constitution of the United States and the laws of Porto Rico.

Legislative and judicial power in Porto Rico.

The legislative authority provided by the Act was empowered to amend, alter, modify, or repeal any law or ordinance, civil or criminal. Congress, however, retained the right in the President to appoint a governor and other executive officers and members of an executive council. The legislative body consists of the executive council and the house of delegates, and is known as the Legislative Assembly of Porto Rico; the house of delegates comprises thirty-five members elected biennially by the qualified voters from the seven districts into which the island is divided. All citizens of Porto Rico, *bona fide* residents for a year, and possessed of other qualifications under the laws and military orders, are allowed to vote. The legislative authority extends to all matters of a legislative character not locally inapplicable, including the power to create, consolidate, and reorganize the municipalities, and to amend, alter, modify, or repeal all

laws and ordinances of Porto Rico, not inconsistent with the provisions of the bill. A judicial power is created, but the judges are appointed by the President of the United States, and Porto Rico is made a judicial district for the purposes of Federal jurisdiction, with appeal to the Supreme Court of the United States. The writ of habeas corpus is extended to the Territory, and a commission was appointed to compile and revise the laws of Porto Rico and report a permanent plan of government within a year.

By acts passed in 1902, a cadet at West Point and a midshipman at Annapolis are authorized from the Territory of Porto Rico,[6] and citizens of Porto Rico are made eligible for enlistment in the Porto Rico regiment, with the right to order them outside the service of the island.

By a proclamation dated July 25, 1901, the President declared that the civil government of Porto Rico had been organized in accordance with the provisions of the Act of Congress.[7]

Nature of Porto Rican government.

From the foregoing, it will be seen that the government of Porto Rico is even more like that provided for the Northwest Territory, than the government of Hawaii, as the legislative body of Porto Rico consists of an executive council appointed by the President to act in conjunction with the house of delegates; but the acknowledgment that the inhabitants of Porto Rico are citizens of the United States is expressly withheld in the declaration of the Act of Congress of April 12, 1900, Section 7, which says

[6] U. S. Stat. at Large, Vol. 32, Part 1, pp. 1011, 1198, 934.
[7] U. S. Stat. at Large, Vol. 32, Part, 2, p. 1983.

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that all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, should be deemed and held to be citizens of Porto Rico and as such entitled to the protection of the United States, and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico.

Guam.

No special provision of law seems to have been enacted concerning the inhabitants of the island of Guam, or defining the status of their citizenship.

The Philippine Islands.

The Act of March 2, 1900.

The Philippine Islands occupy an immense space upon the map. Their inhabitants consist of a vast number of tribes, varying in intelligence and civilization. By an Act of Congress passed March 2, 1901, the President of the United States was authorized to establish a temporary civil government over the Philippine Islands,[8] in the following language: "All military, civil, and judicial powers necessary to govern the Philippine Islands, acquired from Spain by the treaties concluded at Paris on the 10th day of December, 1898, and at Washington on the 7th day of November, 1900, shall, until otherwise provided by Congress, be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for the establishment of civil government and for maintaining

[8] See U. S. Stat. at Large, Vol. 31, p. 910, 5 Fed. Stat. Annot. 711.

and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion," etc.

Government under the Philippine Commission.

Pursuant to the powers vested in him, the President of the United States created a civil commission, which has, from that time until the present, continued to administer the affairs of the Philippine Islands.

By an Act passed July 1, 1902, Congress [9] approved and ratified and confirmed the action of the President in creating the Philippine Commission, and in authorizing the commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission dated April 7, 1900; in creating the offices of civil governor and vice-governor of the Philippine Islands, and authorizing said civil governor and vice-governor to exercise the powers of government to the extent and in the manner and form set forth in the executive order dated June 21, 1901, and in establishing four executive departments of government in the islands, as set forth in the Act of the Philippine Commission.

It is unnecessary to go into the details of the organization of that commission. It is sufficient to say that it was organized for the purpose of securing to the inhabitants of the Philippine Islands a stable and safe government by the United States until such time as its people shall be deemed capable of a larger degree of self-government.

[9] U. S. Stat. at Large, Vol. 32, Part 1, p. 691, 5 Fed. Stat. Annot. 718.

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The Act of July 1, 1902. Rights in the Philippines.

Congress by the Act of July 1, 1902, Section 5,[1] provided a series of safeguards for the protection of life and liberty of the inhabitants of the Philippines. The rights guaranteed by that section are those set forth in the Declaration of Independence, modified by the condition of the inhabitants. Among those rights are, the guarantee that no person shall be deprived of life, liberty or property, without due process of law; the right of the criminal to be heard by himself and counsel and to demand the nature and cause of the accusation; the guarantee that no person shall be twice put in jeopardy for the same offense or be compelled to testify against himself; the right to bail; that no law shall be passed impairing the obligation of contracts; that there shall be no imprisonment for debt; that the writ of habeas corpus shall not be suspended; that no *ex post facto* law or bill of attainder shall be passed; in fact, all the civil rights guaranteed by the Constitution of the United States.

Citizens of Philippine Islands.

Section 4 [2] of the Act declares that all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States. It expressly fails to declare that they shall be deemed citizens of the United States.

Section 6 [3] provides for a census.

[1] 5 Fed. Stat. Annot. 719. [2] 5 Fed. Stat. Annot. 719.
[3] 5 Fed. Stat. Annot. 720.

Section 7 [4] provides for a general election two years after the completion of the census, on certain conditions, to choose delegates to a popular assembly, and that after such assembly shall have convened and organized, the legislative power theretofore conferred on the Philippine Commission in all that part of the islands not inhabited by Moros and non-Christian tribes should be vested in a legislature consisting of two houses, the Philippine Commission and the Philippine Assembly. The qualification of electors shall be the same as now provided by law in the case of electors in municipal elections. The act contains sundry other provisions looking to an enjoyment of the rights of citizenship for the inhabitants of the islands.

Elections and popular assembly.

By the same Act a Bureau of Insular Affairs of the War Department is created. The business assigned to that bureau embraces all matters relating to the civil government in the island possessions of the United States, subject to the jurisdiction of the War Department.

Bureau of Insular Affairs.

Under the foregoing acts, a most thorough and efficient government has been provided for the Philippine Islands. There is little doubt that the inhabitants of Hawaii, Porto Rico, and the Philippines are better governed than they were before, and with the humane and gentle tyranny to which the inhabitants of the Philippines are subjected by the United States, they are doubtless being stimulated to a degree of intelligent conception of our ideals of liberty and self-government, and to a

Government generally in the Philippines.

[4] 5 Fed. Stat. Annot. 720.

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standard of civilization much higher than they ever heretofore conceived.

Citizenship in Our Insular Possessions.

Allegiance and qualified citizenship.

These ends may be invoked to justify the means employed, but four facts concerning the inhabitants of Porto Rico, the Philippines, and Guam remain undisputed, as follows:

1. That the United States commands their allegiance.

2. That they never did voluntarily assume that allegiance.

3. That the qualified citizenship, the restricted liberty, and the limited right of self-government which they possess, are of a nature far inferior to those enjoyed by the inhabitants of the continent of North America who are subject to the jurisdiction of the United States.

4. That both the qualified citizenship conferred upon them and the form of government imposed upon them are different from any citizenship or government that was contemplated by the framers of the Constitution of the United States, when it was proposed and adopted.

As a legal proposition, there can be little doubt of the power of the United States to acquire all these possessions, and of the obligation resting upon it to govern them wisely and judiciously after acquiring them.

Attitude of U. S. Supreme Court.

The Supreme Court of the United States has had occasion to consider and define the status of these islands. A careful study of the case of *DeLima v. Bidwell*,[5] and the group of cases in the same

[5] (1901) 182 U. S. 1.

volume collectively designated as the "insular tariff cases," is recommended to the student who is particularly interested in this subject. The arguments and the decisions rendered place the reader in full possession of the facts and circumstances under which these possessions were acquired, the status of the people as regards the United States, the nature of the governments under which their affairs are administered, and the constitutional provisions, civil and military, relied upon to justify and sustain the United States in the government it has established. Not the least surprising result of such a study will be the discovery of a great divergence of opinion among the learned and able lawyers who compose the Supreme Court of the United States, concerning the ground on which the right of the United States to govern these people rests, and the status of their inhabitants as citizens of the government of the United States. By far the ablest and most concise statement of the law, justifying the acquisition of these islands and sustaining the authority of Congress to define and determine the status of their inhabitants, is found in the concurring opinion of Mr. Justice Gray, in the case of *Downes v. Bidwell.*[6]

Source of the power to acquire and govern.

The power granted to the United States to make war and make treaties, unquestionably involved the right to acquire these territories by conquest, and the power to govern them seems to be a necessary incident of the power to acquire them.[7] The semi-

[6] (1901) 182 U. S. 345.

[7] Sere *v.* Pitot, (1810) 6 Cranch (U. S.) 332; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Stewart *v.* Kahn, (1870) 11

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barbarous inhabitants of the Philippines, at least, have everything to gain and nothing to lose, from the protection and qualified citizenship accorded to them by the American Republic, but the wisdom of assumption by the United States of this class of guardianship over outlying territory has given rise to much debate.

Objections and arguments.

The territorial government heretofore exercised by the United States over national territory contiguous to the States was a temporary government. It was only intended to last, and only lasted, until the new settlers, flowing from the States into the organized Territories, attained such numbers and other requisites as justified their organization into new States. In such cases the transition from the territorial condition into Statehood was easy, rapid, and sure. The difference in the nature and quality of the citizenship between inhabitants of Territories and those of States was only a difference in name, and State citizenship only brought with it a few added political rights. But there can be no such progressive development and rapid growth to independence of Federal supervision in these insular acquisitions. Possession of them involves the necessary strengthening of our naval power, and an increased danger of foreign complications. Their inhabitants are of an alien stock which has never comprehended our ideals of government, or had any conception of the principles of republican liberty or

Wall. (U. S.) 507; Shively *v.* Bowlby, (1894) 152 U. S. 48; De Lima *v.* Bidwell, (1901) 182 U. S. 196; Downes *v.* Bidwell, (1901) 182 U. S. 250; U. S. *v.* Nelson, (1886) 29 Fed. Rep. 204, (1887) 30 Fed. Rep. 115; Gardiner *v.* Miller, (1874) 47 Cal. 575; Franklin *v.* U. S., (1867) 1 Colo. 38.

democratic self-rule, such as we have understood and practiced. If they are ever able to comprehend them, it will only be after generations, if not centuries, of paternal rule and education to elevate them to our standard. It is doubtful if they will ever assimilate to our institutions and whether they will not always need a strong government. It is questionable whether the injury to our home government from the ill effects on its simplicity resulting from this practice of strong government upon our alien subjects will not be greater than any benefit which we are likely to bestow on them. These are the arguments which have arisen against the inauguration of this new insular policy and the adoption of this surprising new citizenship. In a treatise like this, it is sufficient to state the argument without attempting to draw conclusions. What these insular governments may some day become, the future alone will disclose. At present, they are substantially citizens without a voice in their government, and subjects without a king. They are free, provided they conform to the standard of right and wrong fixed for them by a well-meaning and benevolent despot, fixed from a viewpoint altogether different from their own.

The United States had its birth in the protest of Henry against the dictation of foreign rulers. Summing up and denouncing the usurpations of King George, he said: "If this be treason, make the most of it." The nation which sprung into being upon this issue has now become the foreign ruler of an alien people by conquest. It has assumed to revolutionize their mode of existence, mental, moral,

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physical, and political. In its determination to bear the torch of liberty to the remotest people of the earth, it has marched among them, planted its standard, proclaimed its rule, and answered their every protest with the announcement, "This is liberty, and you must make the most of it." History will record the success or failure of the experiment.

This completes the enumeration of the different kinds of citizenship existing under our system of government.

CHAPTER II.

HOW AMERICAN CITIZENSHIP MAY BE ACQUIRED — *a.* IN THE NATION.

By Birth.

PURSUANT to the provisions of the XIV Amendment to the Constitution of the United States, the Federal statutes provide as follows: "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States."[1]

Citizens by birth.

This language has been held to include a person born in the United States of parents of Chinese descent and subjects of the Emperor of China, they being at the time of his birth domiciled residents, engaged in business in the United States.[2] It has also been held to embrace the half-breed children of a

[1] Rev. Stat. U. S., Sec. 1992, 1 Fed. Stat. Annot. 785; The Slaughter-House Cases, (1872) 83 U. S. 36; *In re* Rodriguez, (1897) 81 Fed. Rep. 353.

"While this amendment . . . was intended primarily for the benefit of the negro race, it also confers the right of citizenship upon persons of all other races, white, yellow, or red, born or naturalized in the United States, and 'subject to the jurisdiction thereof.' The language has been held to embrace even Chinese, to whom the laws of naturalization do not extend." *In re* Rodriguez, (1897) 81 Fed. Rep. 353.

[2] U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 649; Citizenship, etc., (1884) 21 Fed. Rep. 905; Lee Sing Far *v.* U. S., (C. C. A. 1899) 94 Fed. Rep. 834; *In re* Yung Sing Hee, (1888) 36 Fed. Rep. 437; *In re* Giovanna, (1899) 93 Fed. Rep. 659; *In re* Wy Shing, (1888) 36 Fed. Rep. 553; *Ex p.* Chin King, (1888) 35 Fed. Rep. 354.

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white father and an Indian mother living apart from her tribe, born within the United States, reared and educated as other children of citizens;[3] and even under the XIII Amendment colored persons were held to be citizens.[4] But an Indian born a member of one of the Indian tribes within the United States does not, merely by reason of his birth in the United States and his separation from his tribe and residence among white citizens, become a citizen.[5] A negro born in slavery and afterwards becoming a

[3] U. S. *v.* Hadley, (1900) 99 Fed. Rep. 437; U. S. *v.* Ward, (1890) 42 Fed. Rep. 320; U. S. *v.* Higgins, (1901) 110 Fed. Rep. 609, distinguishing U. S. *v.* Higgins, (1900) 103 Fed. Rep. 348. See also Farrell *v.* U. S., (C. C. A. 1901) 110 Fed. Rep. 942; *Ex p.* Reynolds, (1879) 5 Dill. (U. S.) 394.

[4] Hall *v.* De Cuir, (1877) 95 U. S. 509. See also U. S. *v.* Rhodes, (1866) 1 Abb. (U. S.) 28, 27 Fed. Cas. No. 16,151.

[5] Elk *v.* Wilkins, (1884) 112 U. S. 94; U. S. *v.* Osborne, (1880) 6 Sawy. (U. S.) 406; U. S. *v.* Boyd, (C. C. A. 1897) 83 Fed. Rep. 547.

"Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations. . . . Such Indians, then, not being citizens by birth, can only become citizens in the second way mentioned in the Fourteenth Amendment, by being 'naturalized in the United States,' by or under some treaty or statute." Elk *v.* Wilkins, (1884) 112 U. S. 94.

By Act of Congress, of Feb. 8, 1887, every Indian born within the territorial limits of the United States to whom allotments of land shall have been made under the provisions of the act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is declared to be a citizen of the United States and entitled to all the rights, privileges, and immunities of such citizens. U. S. *v.* Kopp, (1901) 110

citizen of the Cherokee Nation has been held to be not an Indian.[6]

By special enactment, all persons born in the country formerly known as the Territory of Oregon and subject to the jurisdiction of the United States on the 18th day of May, 1872, are declared citizens of the United States.[7]

By Naturalization.

We have already seen that the power to enact a uniform system of naturalization laws was among the first bestowed upon Congress by the Constitution.

Who may be naturalized.

Naturalization is defined to be the act of adopting a foreigner and clothing him with the privileges of a native citizen.[8] The power of naturalization is vested exclusively in Congress by the Constitu-

Fed. Rep. 160; *In re* Celestine, (1902) 114 Fed. Rep. 553; State *v.* Denoyer, (1897) 6 N. Dak. 586. See also U. S. *v.* Boyd, (C. C. A. 1897) 83 Fed. Rep. 547.

[6] Alberty *v.* U. S., (1896) 162 U. S. 499.

The term "Indian" is one descriptive of race, and therefore men of other races who are adopted into an Indian tribe do not thereby become Indians. They may by such adoption become entitled to certain privileges in the tribe, and make themselves amenable to its laws and usages. Yet they are not Indians. Responsibility to the laws of the United States cannot thus be thrown off, and a right acquired to be treated by the government and its officers as if they were Indians born. U. S. *v.* Rogers, (1846) 4 How. (U. S.) 567. See also Westmoreland *v.* U. S., (1895) 155 U. S. 545; Roff *v.* Burney, (1897) 168 U. S. 218; Raymond *v.* Raymond, (C. C. A. 1897) 83 Fed. Rep. 721.

[7] Rev. Stat. U. S., Sec. 1995, 1 Fed. Stat. Annot. 788.

[8] Bouvier's Law Dictionary. Osborn *v.* U. S. Bank, (1824) 9 Wheat. (U. S.) 827; Boyd *v.* Thayer, (1892) 143 U. S. 162; Postmaster at New Orleans, (1858) 9 Op. Atty.-Gen., 259; Minneapolis *v.* Reum, (1893) 12 U. S. App. 446; Am. & Eng. Encyc. of Law (2d ed.), Vol. 6, p. 19.

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tion, and cannot be exercised by the State.[9] Although the power to enact naturalization laws existed from the time the Constitution went into effect in 1789, the earliest Act of Congress on the subject of naturalization was passed April 14, 1802, thirteen years after the Constitution went into effect. Under the last named Act and sundry amendments, admission to citizenship of three principal classes of persons was provided for, to wit:

First, aliens who had resided for a certain time within the limits and under the jurisdiction of the United States, to be naturalized individually by proceedings in a court of record.[1]

Second, the children of persons so naturalized dwelling within the United States and being under

[9] U. S. *v.* Villato, (1797) 2 Dall. (Pa.) 373; Thurlow *v.* Massachusetts, (1847) 5 How. (U. S.) 504; Smith *v.* Turner, (1849) 7 How. (U. S.) 283; Chirac *v.* Chirac, (1817) 2 Wheat. (U. S.) 269; Collet *v.* Collet, (1792) 2 Dall. (U. S.) 294; U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 649.

That the exercise of the power to pass naturalization laws by the State governments is incompatible with the grant of a power to Congress to pass uniform laws on that subject, is obvious, from the consideration that the former would be dissimilar and frequently contradictory; whereas the system is directed to be uniform, which can only be rendered so by the exclusive power in one body to form them. Golden *v.* Prince, (1814) 3 Wash. (U. S.) 313.

Our foreign intercourse being exclusively committed to the general government, it is peculiarly their province to determine who are entitled to the privileges of American citizens, and the protection of American government. And the citizens of any one State being entitled by the Constitution to enjoy the rights of citizenship in every other State, that fact creates an interest in this particular in each other's acts, which does not exist with regard to their bankrupt laws; since State acts of naturalization would thus be extraterritorial in their operation, and have an influence on the most vital interests of other States. Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 277.

[1] See U. S. Rev. Stat., Title XXX, Sec. 2165, 5 Fed. Stat. Annot. 200.

the age of twenty-one at the time of such naturalization.[2]

Third, foreign-born children of American citizens coming within the definitions prescribed by Congress.[3]

Length of Residence Necessary.

Act of 1813.

As early as 1813 Congress enacted that an alien, to be entitled to admission as a citizen, must have resided within the United States for a continuous term of five years.[4] This general provision is modified by several special enactments, as follows:

Discharged soldiers.

An alien who has enlisted and has been honorably discharged from the regular volunteer forces of the army of the United States is not required to prove more than one year's residence.[5]

Seamen.

A seaman being a foreigner who declares his intention of becoming a citizen and then serves three years aboard a merchant vessel of the United States is entitled to be admitted.[6]

An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:[7]

Declaration of intention.

First, a preliminary declaration of intention must be made. It must be made at least two years prior to his admission to citizenship. It must be made under oath before a circuit or district court of the United States or a district or supreme court of the

[2] See U. S. Rev. Stat., Title XXX, Sec. 2172, 5 Fed. Stat. Annot. 209.

[3] U. S. Rev. Stat., Title XXX, Sec. 1993, 1 Fed. Stat. Annot. 786.

[4] U. S. Rev. Stat., Title XXX, Sec. 2170, 5 Fed. Stat. Annot. 208.

[5] U. S. Rev. Stat., Sec. 2166, 5 Fed. Stat. Annot. 205.

[6] U. S. Rev. Stat., Sec. 2174, 5 Fed. Stat. Annot. 210.

[7] U. S. Rev. Stat., Sec. 2165, 5 Fed. Stat. Annot. 200.

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Territories, or a court of record of any of the States having common-law jurisdiction,[8] and a seal and a clerk.[9] The declaration must state that it is the *bona fide* intention of the applicant to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, particularly by name, to the prince, potentate, state, or sovereignty of which

[8] Congress has power to confer and the State courts authority to accept and exercise the power to naturalize aliens. Levin *v.* U. S., (C. C. A. 1904) 128 Fed. Rep. 826; Croesus Min, etc., Co. *v.* Colorado Land, etc., Co., (1884) 19 Fed. Rep. 78. A State court is the judicial agency of the Federal Government in such proceedings. People *v.* Sweetman, (Supm. Ct. Gen. T. 1857, 3 Park. Crim. (N. Y.) 374; In the Matter of Christern, (1878) 43 N. Y. Super. Ct. 523.

Congress cannot constrain a State court to exercise this jurisdiction, and the State legislatures may, if they see fit, limit or restrain the exercise of this jurisdiction by the State courts. Rushworth *v.* Judges, (1895) 58 N. J. L. 97; *Ex p.* Knowles, (1855) 5 Cal. 300; Matter of Ramsden, (N. Y. Super. Ct. Spec. T. 1857) 13 How. Pr. (N. Y.) 429.

Concerning the meaning of "having common-law jurisdiction" see Levin *v.* U. S., (C. C. A. 1904) 128 Fed. Rep. 826; U. S. *v.* Power, (1877) 14 Blatchf. (U. S.) 223; Gladhill, Petitioner, (1844) 8 Met. (Mass.) 168; Citizenship — Levy's Case, (1874) 14 Op. Atty.-Gen. 509; Morgan *v.* Dudley, (1857) 18 B. Mon. (Ky.) 693; U. S. *v.* Lehman, (1899) 39 Fed. Rep. 49; *Ex p.* Tweedy, (1884) 22 Fed. Rep. 84; Matter of Conner, (1870) 39 Cal. 98; People *v.* McGowan, (1875) 77 Ill. 649; People *v.* Sweetman, (Supm. Ct. Gen. T. 1857) 3 Park. Crim. (N. Y.) 358; *Ex p.* McKenzie, (1897) 51 S. Car. 244.

"If the court may exercise any part of that jurisdiction it is within the language of the statute and within its meaning as well." U. S. *v.* Power, (1877) 14 Blatchf. (U. S.) 223.

[9] As to a court without a clerk, see Dean, Petitioner, (1891) 83 Me. 489; *Ex p.* Cregg, (1854) 2 Curt. (U. S.) 98; State *v.* Whittemore, (1870) 50 N. H. 245; State *v.* Webster, (1878) 7 Neb. 471; Gladhill, Petitioner, (1844) 8 Met. (Mass.) 171.

The court must have a clerk distinct from the judge; not necessarily an officer denominated clerk, but a permanent recording officer, charged with the duty of keeping a true record of the doings of the court and afterwards of authenticating them. Dean, Petitioner, (1891) 83 Me. 489.

the alien may be at the time a citizen or subject.[1] By an amendment enacted February 1, 1876,[2] the preliminary declaration of intention may be made before the clerk of any of the courts named above.[3]

Persons exempt from preliminary declaration.

A preliminary declaration, however, is not required in the following cases:

1. The widow and children of an alien who has made his preliminary declaration and died before he was actually naturalized, are declared to be citizens upon taking the oaths prescribed by law.[4]

2. By an act passed May 26, 1824,[5] an alien being under twenty-one years of age who has resided in the United States three years next preceding his arrival at age, and who has continued to reside therein to the time he makes application to be admitted a citizen, may, after he attains the age of twenty-one and after he has resided five years

[1] Omission of name not fatal. *Ex p.* Smith, (1847) 8 Blackf. (Ind.) 395.

"An applicant for naturalization is a suitor, who, by his petition, institutes a proceeding in a court of justice for the judicial determination of an asserted right. Every such petition must, of course, allege the existence of all facts, and the fulfilment of all conditions, upon the existence and fulfilment of which the statutes which confer the right asserted have made it dependent." *In re* Bodek, (1894) 63 Fed. Rep. 813, 3 Pa. Dist. 725.

[2] 19 Stat. L., c. 5, p. 2, 5 Fed. Stat. Annot. 205.

[3] *In re* Langtry, (1887) 31 Fed. Rep. 879; Andres *v.* Arnold, (1889) 77 Mich. 87.

The last named case discusses the location of the place at which the clerk may take the declaration. See also Butterworth, Applicant, (1846) 1 Woodb. & M. (U. S.) 323.

Proof of declaration is made by production of the record or by due certification thereof. *In re* Fronascone, (1900) 99 Fed. Rep. 48; State *v.* Barrett, (1889) 40 Minn. 65; Berry *v.* Hull, (1892) 6 N. Mex. 643.

[4] Rev. Stat. U. S., Sec. 2168, 5 Fed. Stat. Annot. 205.

[5] Rev. Stat. U. S., Sec. 2167, 5 Fed. Stat. Annot. 206.

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within the United States, including the three years of his minority, be admitted without preliminary declaration.[6]

3. By an Act passed July 17, 1862,[7] an alien of the age of twenty-one years and upwards, who has enlisted or may enlist in the armies of the United States,[8] and has been honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention.[9]

4. By an Act passed July 26, 1894,[1] aliens over twenty-one years of age, honorably discharged from the navy or marine corps after five consecutive years' service in the navy, or one enlistment in the marine corps, may be admitted without any previous declaration.

Oath — contents.

Second, he shall, at the time of his application to be admitted, declare on oath before some one of the ourts specified:

(a) That he will support the Constitution of the United States.

(b) That he renounces and abjures all allegiance and fidelity to any foreign prince, etc.,

(c) Particularly, by name, the prince or potentate of whom he was subject.

[6] Contzen *v.* U. S., (1900) 179 U. S. 195.

If he has lived in the United States five years when he attains the age of twenty-one years, he may be admitted to citizenship the next day. Schutz's Petition, (1886) 64 N. H. 241.

[7] U. S. Stat. L., Vol. 12, p. 597. This is now Sec. 2166 of the Revised Statutes. See 5 Fed. Stat. Annot. 205.

[8] *In re* Bailey, (1872) 2 Sawy. (U. S.) 200; Berry *v.* Hull, (1892) 6 N. Mex. 643.

[9] *In re* Bailey, (1872) 2 Sawy. (U. S.) 200; Berry *v.* Hull, (1892) 6 N. Mex. 643.

[1] U. S. Stat. L., Vol. 28, p. 124, 5 Fed. Stat. Annot. 206.

(d) The proceedings shall be recorded by the clerk.

Third, it shall be made to appear to the court:

Residence and character.

(a) That he has resided in the United States five years at least.

(b) Within State or Territory one year at least.

(c) That during that time he has behaved as a man of good moral character.[2]

(d) That he is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.[3]

(e) But the oath of the applicant does not prove his residence.[4]

[2] The fact that he cannot read or write does not make him ineligible, if he is shown to be of good moral character. *In re* Rodriguez, (1897) 81 Fed. Rep. 355. But a perjurer is ineligible. *In re* Spenser, (1878) 5 Sawy. (U. S.) 195; and a Socialist was rejected. *Ex p.* Sauer, (1891) 81 Fed. Rep. 355, note.

"Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered, for the time being, immoral, within the purview of this statute." *In re* Spenser, (1878) 5 Sawy. (U. S.) 195.

[3] But a foreigner ignorant of the English language and who did not know the name of the President, but thought that Washington was President, was held ineligible. *In re* Kanaka Nian, (1889) 6 Utah 259.

[4] See 5 Fed. Stat. Annot., p. 202, and the following cases cited: *In re* Bodek, (1894) 63 Fed. Rep. 814; Lanz *v.* Randall, (1876) 4 Dill. (U. S.) 425; Baird *v.* Byrne, (1854) 3 Wall. Jr. (C. C.) 1; Johnson *v.* U. S., (1893) 29 Ct. Cl. 1; State *v.* Barrett, (1889) 40 Minn. 65; Matter of ———, (1845) 7 Hill (N. Y.) 137; *In re* Spenser, (1878) 5 Sawy. (U. S.) 195; *Ex p.* Sauer, (1891) 81 Fed. Rep. 355, note; Matter of Clark, (1854) 18 Barb. (N. Y.) 446; Citizenship — Levy's Case, (1874) 14 Op. Atty.-Gen. 509; Matter of Christern, (1878) 43 N. Y. Super. Ct. 523; McCarthy *v.* Marsh, (1851) 5 N. Y. 263; State *v.* Macdonald, (1877) 24 Minn. 48; Banks *v.* Walker, (1848) 3 Barb. Ch. (N. Y.) 438; Spratt *v.* Spratt, (1830) 4 Pet. (U. S.) 406; Green *v.* Salas, (1887) 31 Fed. Rep. 106; Stark *v.* Chesapeake Ins. Co., (1813) 7 Cranch (U. S.) 420;

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Renunciation of titles.

Fourth, in case the alien applying to be admitted to citizenship has borne any hereditary title or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

The fifth and sixth clauses of the Naturalization Law may be omitted, as they simply declared certain persons residing in the United States prior to the 29th of January, 1795, and between June 18, 1798, and June 18, 1812, to be citizens, and are no longer of any practical importance.

Provisions concerning children.

The Naturalization Law further provides concerning children, as follows:

1. Children under age when their parents were

The Acorn, (1870) 2 Abb. (U. S.) 434; People *v.* McGowan, (1875) 77 Ill. 644; Ritchie *v.* Putnam, (1835) 13 Wend. (N. Y.) 524; Com. *v.* Towles, (1835) 5 Leigh (Va.) 743; McDaniel *v.* Richards, (1821) 1 McCord L. (S. Car.) 187; State *v.* Hoeflinger, (1874) 35 Wis. 393; Vaux *v.* Nesbit, (1826) 1 McCord Eq. (S. Car.) 352; *In re* McCoppin, (1869) 5 Sawy. (U. S.) 630; Contzen *v.* U. S., (1900) 179 U. S. 191; Boyd *v.* Thayer, (1892) 143 U. S. 178; Blight *v.* Rochester, (1822) 7 Wheat. (U. S.) 546; Strickley *v.* Hill, (1900) 22 Utah 268; Hogan *v.* Kurtz, (1876) 94 U. S. 773; Kreitz *v.* Behrensmeyer, (1888) 125 Ill. 141; People *v.* McNally, (Supm. Ct. Spec. T. 1880) 59 How. Pr. (N. Y.) 500; Sasportas *v.* De la Motta, (1858) 10 Rich. Eq. (S. Car.) 38; Nalle *v.* Fenwick, (1826) 4 Rand. (Va.) 585; Miller *v.* Reinhart, (1855) 18 Ga. 239; Belcher *v.* Farren, (1891) 89 Cal. 78; Matter of Desty, (N. Y. Super. Ct. Spec. T. 1880) 8 Abb. N. Cas. (N. Y.) 250; Prentice *v.* Miller, (1890) 82 Cal. 570; Slade *v.* Minor, (1817) 2 Cranch (C. C.) 139; Gagnon *v.* U. S., (1902) 38 Ct. Cl. 10; Dryden *v.* Swinburne, (1882) 20 W. Va. 89; Navigation Laws, (1883) 17 Op. Atty.-Gen. 534; *In re* An Alien, (1842) 1 Fed. Cas. No. 201*a;* Anonymous, (1846) 4 N. Y. Leg. Obs. 98, 1 Fed. Cas. No. 465; U. S. *v.* Norsch, (1890) 42 Fed. Rep. 417; U. S. *v.* Grottkau, (1887) 30 Fed. Rep. 672.

duly naturalized under any law of the United States; or,

2. Children whose parents previous to the passing of the United States naturalization laws became citizens of any State; or,

3. Children born out of the limits and jurisdiction of the United States, of persons who are or have been citizens of the United States —

All the above are declared to be citizens of the United States.

b. IN A STATE.

By Birth.

Every State in the Union has enacted, either in its constitution or in its statutes, that all persons born in the State shall be deemed citizens of the State. The language is not identical, but it will be found substantially the same by reference to the constitutions and statutes of the several States.

By State Enactments.

All the States have, in one form or another, provided that all persons born in any other State of the Union who may be or become residents of the State enacting the law, and all aliens naturalized under the laws of the United States who may be or become residents of the State, shall be citizens of the State. A particular inspection of the laws of each State will be necessary to ascertain the precise language in which this general principle is declared, and the length of residence requisite in any particular State to acquire citizenship therein.

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By Federal Enactments.

The XIV Amendment to the Constitution of the United States declares that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the State wherein they reside. The question what residence entitles a native or a naturalized citizen to all the privileges of citizenship in a particular State is generally determined by some State enactment prescribing the length of residence necessary to entitle a person to all the privileges of State citizenship. Until the enactment of the XIV Amendment, no attempt was ever made by the Federal government to define or limit the rights of citizenship in any State.

c. OUTSIDE THE NATION OR STATES.

Foreign-born children of citizens.

We have already seen that under certain Federal statutes the widow and children of an alien who has made his preliminary declaration, and died without being actually naturalized, have certain inchoate rights of citizenship which they may make perfect upon taking the oaths prescribed by law, even though they have not been within the limits of the nation or of the State. So, too, children born out of the limits and jurisdiction of the United States, of persons who are citizens of the United States, are deemed citizens of the United States; and by the statutes of many of the States they are also deemed citizens of the State whereof their parents are citizens. For example, the author of this volume was born in Rio de Janeiro, Brazil, in 1846, of parents who were citizens of the United States and of the State of Virginia. By the terms of the Federal statutes he is a

citizen of the United States; and by the terms of the statutes of Virginia, all children, wherever born, whose father, or if he be dead whose mother, was a citizen of Virginia at the time of the birth of such children, were to be deemed citizens of that State. A notable instance of such foreign birth is George B. McClellan, the present mayor of New York city, who was born in Dresden, Saxony. At the time of his birth his parents were citizens of New Jersey, his father, Capt. George B. McClellan, being in the service of the United States abroad. He is as much a citizen of the United States and of the State of New Jersey as if he had been born in Trenton, the capital of the State of New Jersey.

But the citizenship of children whose fathers were citizens is qualified to this extent: the rights of citizenship of the parent do not descend to the children if the parents have never resided in the United States. Thus, if Mayor George B. McClellan had never resided in the United States, his son, George B. McClellan, third, would not inherit his father's right of citizenship in the United States.

d. OF THE PERSONS WHO MAY BE CITIZENS.

As a matter of course, men may be citizens, and we will not discuss that further.

Citizenship of women by marriage.

Women may be citizens as well as men.[5] The statutes of the United States expressly provide

[5] Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162; U. S. Stat. L., Sec. 1994, 1 Fed. Stat. Annot. 786; Dorsey *v.* Brigham, (1898) 177 Ill. 250; Kane *v.* McCarthy, (1869) 63 N. Car. 299.

Since the extension of the naturalization laws to persons of African descent, this statutory provision is applicable to negro as well as white women. Broadis *v.* Broadis, (1898) 86 Fed. Rep. 951.

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that any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. The naturalization laws themselves provide [6] that the widow of an alien who has complied with the first condition of naturalization, and died without being actually naturalized, shall be considered a citizen.

The political status of the wife follows that of the husband, with the modification that there must be withdrawal from her native country, or equivalent act expressive of her election to renounce her citizenship as a consequence of her marriage.[7]

Nonresident wives of citizens.

The citizenship acquired by the wife by marriage to a citizen of the United States is not a qualified or contingent one, but is as enduring and unqualified as if she had been naturalized upon her own formal application.[8] It may therefore happen that an alien may come to this country and become a citizen, whereby his wife, who might herself be lawfully naturalized, shall be deemed a citizen, although she did not come to the United States until after his death. His citizenship, in such case, confers citizenship upon her.[9] An alien woman whose husband became a

[6] Rev. Stat. U. S., Sec. 2168, 5 Fed. Stat. Annot. 207.

[7] Ruckgaber *v.* Moore, (1900) 104 Fed. Rep. 948.

[8] Leonard *v.* Grant, (1880) 5 Fed. Rep. 11; U. S. *v.* Kellar, (1882) 13 Fed. Rep. 82, (1882) 11 Biss. (U. S.) 314.

"No law expressly providing for a temporary or contingent citizenship is known to the legislation of the United States, and so unusual and singular a purpose ought not to be attributed to Congress without an explicit provision to that effect." Leonard *v.* Grant, (1880) 5 Fed. Rep. 11.

[9] Kelly *v.* Owen, (1868) 7 Wall. (U. S.) 496.

Notwithstanding the letter of the statute, "might herself be lawfully naturalized," it is only necessary that the woman should be

naturalized citizen of the United States, thereby herself became a citizen, although she may have been living at a distance from her husband for years and may never have come into the United States until after his death.[1] And a woman married to a citizen of the United States is, by reason of her marriage, to be deemed a citizen, irrespective of the time or place of marriage, and although she may never have resided in the United States.[2] An alien widow of a naturalized citizen of the United States, although she never resided within the United States during the lifetime of her husband, is a citizen of the United States and is entitled to dower in his real estate.[3] A woman born in France, whose father was a citizen of the United States, and who married a French citizen and continued after the death of her husband to reside in France, is a citizen of France but not of the United States.[4]

Children.

Children may be citizens. They are citizens by birth, and, as seen above, become citizens through the naturalization of their parents. By the express terms of the statute, however, the children born abroad of American citizens, whether the parents be citizens by birth or by naturalization, do not trans-

a person of the class or race permitted to be naturalized by existing laws. It is not required that she should have the statutory qualifications as to residence, conduct, and opinions. Being the wife of a citizen, she is regarded as qualified for citizenship, and therefore is considered a citizen. Leonard *v.* Grant, (1880) 5 Fed. Rep. 11.

[1] Headman *v.* Rose, (1879) 63 Ga. 458.

[2] See (1874) 14 Op. Atty.-Gen. 402; but see Ruckgaber *v.* Moore, (1900) 104 Fed. Rep. 948.

[3] Burton *v.* Burton, (1864) 1 Keyes (N. Y.) 359; approved in Kelly *v.* Owen, (1868) 7 Wall. (U. S.) 496; Kane *v.* McCarthy, (1869) 63 N. Car. 299.

[4] Berthemy's Case, (1866) 12 Op. Atty.-Gen. 7.

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mit their right of citizenship to their children unless they have themselves resided in the United States.

e. NATIONAL AND STATE CITIZENSHIP NOT NECESSARILY COEXISTENT.

Residence as affecting State citizenship.

A citizen of the United States does not thereby necessarily become a citizen of any particular State. This distinction is clearly pointed out in the Slaughter-house Cases cited above. The XIV Amendment declares that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside, but the amendment does not attempt to define what constitutes residence in States. It might very well happen, for example, that a person had been naturalized in one State and lost his residence in that State by removing from it, without having acquired a residence in another State to which he had removed. The XIV Amendment cannot be so read as to make him a resident of any State except on the terms prescribed generally by the laws of that State for the acquisition of citizenship therein.[5]

A curious anomaly resulting from the last-named condition in our complex system of national and State governments is found in the following state of facts:

Voting by aliens.

The Constitution of the United States provides

[5] "Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36.

(Art. I, Sec. 2) that the House of Representatives shall be composed of members chosen every second year by the people of the several States, and electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The naturalization laws give an alien no political rights as a citizen of the United States until he has been admitted to citizenship. In many of the States the qualifications for electors of the most numerous branch of the State legislature are bestowed upon aliens who have made their preliminary declarations; consequently, it happens that in many instances the persons who vote for members of the Congress of the United States are not even citizens of the United States. Under this condition, it is conceivable that in the different States the votes of aliens to the United States might elect sufficient members of the House of Representatives of the United States to control the action of the Congress of the United States.

CHAPTER III.

OF THE OBLIGATIONS AND DUTIES OF THE CITIZEN TO THE NATION AND THE STATE.

Allegiance.

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Definition and tests of allegiance.

THE word allegiance is employed to express the obligation of fidelity and obedience due by the individual, as a citizen, to his government, in return for the protection he receives from it.

Fidelity is evidenced not only by obedience to the laws of one's country, and lip-service, but by faithful disclosure to the government of the property owned by the citizen, which, with that of other citizens, is subject[1] to the burdens necessary to sustain the government; by the payment of the citizen's just share of taxation, and by responding with cheerfulness and alacrity to all calls lawfully made by the government to bear arms or render other personal service for the common defense and for the security of the liberties and the general welfare of his State.

Obedience consists of respect for, observance of, and aid in maintaining, the laws of the government.

[1] Funk & Wagnalls's Standard Dictionary; Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147; U. S. Greiner, (1861) 4 Phila. (Pa.) 396, 18 Leg. Int. (Pa.) 149, 26 Fed. Cas. No. 15,262; Calvin's Case, 7 Coke 1; State *v.* Hunt, (1834) 2 Hill L. (S. Car.) 1; U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 364; Charge to Grand Jury, (1861) 1 Sprague (U. S.) 602; Bouvier's Law Dictionary. tit. Treason; Foster's Crown Law 183.

The Different Kinds of Allegiance.

The books describe allegiance as arising in four ways:

1. Natural allegiance — that which arises by nature and birth.

2. Acquired allegiance — that arising by denization or naturalization.

3. Local allegiance — that arising from temporary residence, however short, in a country.[2]

4. Legal allegiance — that arising from oath.

Formal Compact Not Necessary to Create Allegiance.

Effect of change of government.

It is by no means essential that a formal compact between a citizen and his government shall ex-

[2] Am. & Eng. Encyc. of Law, p. 148, (2d Ed.); Brown's Law Dictionary (Sprague's Ed.); Powers of Congress, (1855) 8 Op. Atty.-Gen. 139; Rights of Expatriation, (1859) 9 Op. Atty.-Gen. 356; Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147; Inglis *v.* Sailor's Snug Harbor, (1830) 3 Pet. (U. S.) 155; Jackson *v.* Goodell, (1822) 20 Johns. (N. Y.) 188; 1 Blackstone's Com. 366. Allegiance is often spoken of as fealty. Wallace *v.* Harmstad, (1863) 44 Pa. St. 501. Nature of alien's allegiance to country of his residence, 1 East P. C., c. 2, Sec. 4; 1 Hale P. C. 10; Foster's Crown Law Discourse, Sec. 2; 2 Kent's Com. 63–64; Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147; Homestead Case, (1892) 1 Pa. Dist. 785; The Schooner Exchange *v.* M'Faddon, (1812) 7 Cranch (U. S.) 116; *Ex p.* Reynolds, (1879) 5 Dill. (U. S.) 394; *Ex p.* Thompson, (1824) 3 Hawks (N. Car.) 362.

Allegiance may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence. Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147.

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ist in order to create the duty of allegiance.[3] If a *de facto* government is established, overthrowing and supplanting a *de jure* government, and the citizen remains under the newly established government, he assumes the duty of allegiance to it, which always exists between the governing and the governed.[4] When a government is changed, those disaffected do not owe immediate allegiance to the changed authority, but should be allowed a reasonable time to depart, and the court and jury should determine what is such reasonable time.[5]

Of Dual Allegiance.

Controversy as to paramount allegiance.

The peculiar nature and constitution of our government has created a dual allegiance on the part of our citizens; an allegiance due to the national government and to the State government. In theory these two have been, from the outset, entirely compatible with each other. In practice, however,

[3] Respublica *v.* Chapman, (1781) 1 Dall. (Pa.) 53.

[4] Thorington *v.* Smith, (1868) 8 Wall. (U. S.) 1; Respublica *v.* Chapman, (1781) 1 Dall. (Pa.) 53. The Confederate government never a true *de facto* government, Keppel *v.* Petersburg R. Co., (1868) Chase (U. S.) 167, 14 Fed. Cas. No. 7,722; Sprott *v.* U. S., (1874) 20 Wall. (U. S.) 459; Shortridge *v.* Macon, (1867) Chase (U. S.) 136. The vanquished owe allegiance to the victor, Hanauer *v.* Woodruff, (1872) 15 Wall. (U. S.) 439; U. S. *v.* Rice, (1819) 4 Wheat. (U. S.) 246; Thorington *v.* Smith, (1868) 8 Wall. (U. S.) 1. Duration of victor's sovereignty co-extensive with his absolute control, Fleming *v.* Page, (1850) 9 How. (U. S.) 603.

In such a case the inhabitants pass under a temporary allegiance to the *de facto* government, and are bound by such laws, and such only, as it chooses to recognize and impose. From the nature of the case, no other laws can be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience. *Per* Story, J., in U. S. *v.* Rice, (1819) 4 Wheat. (U. S.) 246.

[5] Respublica *v.* Chapman, (1781) 1 Dall. (Pa.) 53.

they gave rise to a great debate, which lasted over seventy years, and culminated in one of the bloodiest civil wars in history.

This controversy was primarily due to the following facts:

1. That the States which formed the Union were independent sovereign States, entitled to the unqualified allegiance of their citizens, before the Union existed.
2. That, whatever may have been the quality and priority of the allegiance due to the Federal government by the citizens of the States which formed the Union, that Federal allegiance was junior in time to the allegiance which they owed to their States.
3. That by Amendment X to the Federal Constitution, adopted almost simultaneously with the Constitution, all powers not delegated to the United States by the Constitution or prohibited by it to the States were reserved to the States respectively, or to the people; and
4. That although the question of the right of a State to withdraw from the Union, if dissatisfied with its operations, was fully considered and debated in the convention which framed the Constitution, there was no expression in the instrument, as it was finally adopted, definitely settling the existence or nonexistence of that right, and it was left an open and debatable question.

Doctrine established by the civil war.

As a consequence, much confusion existed for many years, in the minds of many citizens, upon

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the question whether, in an issue between the State and the Nation, what was known in the debates of the period as their paramount allegiance was due primarily to the State or to the Nation by citizens of both. Without going further into that protracted and bloody argument, it is sufficient to say that the views of citizens upon the right of a State to withdraw from the Union and upon the question whether, in such a crisis, the paramount allegiance of the citizen was due to his State or to the Nation, differed so irreconcilably in different sections of the Union that, when certain States and their citizens attempted to withdraw or secede from the Union, the attempt was resisted by the other States and their citizens who still adhered to the United States, and a bloody civil war followed, waged by the States which adhered to the Union, and in the name of the United States, the outcome of which was that those who claimed that the Union was an "an indissoluble Union of indestructible States," and that paramount allegiance was due to the United States by every citizen, completely triumphed, and that doctrine is now established beyond question.

The oath of paramount allegiance.

Since the great Civil War the oath of allegiance to the nation administered to persons entering its military and naval service pledges the party taking it that he will thenceforth bear true faith and allegiance to the United States, and will support, protect, and defend it against all enemies whatsoever, "foreign or domestic." For the peace of the nation it would have been better if such an unqualified oath of paramount allegiance had been exacted from all public servants from the foundation of the govern-

ment; for it is a historic fact that at the outbreak of the great Civil War many persons who had for years been in the military and naval service of the United States, a large proportion of whom had been educated by the Federal government, had never been called upon to take an oath of paramount allegiance to the United States, and consequently felt at liberty to resign their positions in the Federal service, and tender their services to their native States, under the firm and conscientious conviction that the latter were entitled to their paramount allegiance. Among them were men whose exalted lives and spotless characters exclude all questions of the purity of their motives, and whose action only emphasizes the difficulty of discovering conclusively and deciding where paramount allegiance was due under all the circumstances.

Fortunately, this question, in the light of the arbitrament of war, can never recur. Henceforth it must be conceded that, whenever the two allegiances, Federal and State, of an American citizen, are in apparent conflict, the latter must yield to the former. There can be no such thing, under our system, as allegiance to a State, in conflict with allegiance to the Federal government.

Of Patriotism.

Characteristics of patriotism.

The spirit in the citizen that, originating in love of country, results in obedience to its laws, the support and defense of its existence, rights, and institutions, and the promotion of its welfare, is called patriotism. The more unselfish and self-sacrificing is the spirit displayed by the citizen, the higher and

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more exalted his patriotism. Such a citizen is called a patriot.

In the experience of governments, the citizens who evade bearing their personal burdens of citizenship, or, when tested, lack courage to discharge those burdens, are not so numerous as, and are much more readily discovered than, those who evade the lawful burdens upon their property, and who, by eloigning it or concealing it where it cannot be reached for taxation, cast the burden of taxation unduly upon their fellow-citizens, while reaping a full share of benefits. Such citizens are not a whit less faithless or detestable than the physical skulkers or cowards. It is the citizen who yields the legitimate share of his property, as well as the proper services of his person, to the lawful demands of his country for support, who is the real patriot. Yet, partly because the crime is not so apparent, and partly because of the power of wealth to buy condonement of crime, the scorn of mankind has never been visited as relentlessly upon the tax-dodger as upon the coward.

Of Treason.

Definitions and grades of treason.

The antithesis of allegiance and patriotism is treason. Treason is defined as "a breach of allegiance to a government committed by one under its protection."[6] Under the English law there were two kinds of treason, high and petit. High treason embraced the crime which we generally know as treason. Petit treason embraced sundry acts now

[6] 28 Am. & Eng. Encyc. of L. 457; Rex *v.* Cranburne, (1696) 13 How. St. Tr. 227; Rex *v.* Vaughan, (1696), 13 How. St. Tr. 526; U. S. *v.* Wiltberger, (1820) 5 Wheat. (U. S.) 76; Respublica *v.*

treated as distinct crimes, as when a servant killed his master, a wife her husband, or an ecclesiastical person his superior.[7] In America we have only simple treason.

By the Federal Constitution, treason is defined as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."[8] The same instrument provides that the President and Vice-President and all civil officers of the United States may be removed from office for treason;[9] and it likewise renders senators and representatives liable to arrest for treason.[1] But the Constitution expressly requires, for conviction of treason, the testimony of two witnesses to the same overt act, or a confession in open court. Our country has been singularly blessed in the small number of prosecutions for treason. The decisions have been correspondingly few.[2]

Federal statutes.

A whole chapter of the Revised Statutes, consisting of eight sections, is devoted to "crimes against the existence of the government." The crimes defined are treason, misprision of treason, inciting or engaging in rebellion or insurrection,

Chapman, (1781) 1 Dall. (Pa.) 53; 1 Hale's Pleas of Crown, 48; U. S. *v.* Greiner, (1861) 4 Phila. (Pa.) 396; 18 Leg. Int. (Pa.) 149; 26 Fed. Cas. No. 15,262.

[7] 28 Am. & Eng. Encyc. of L. p. 458; State *v.* Bilansky, 3 Minn. 246.

[8] U. S. Const., Art. III, Sec. 3, Cl. 1.

[9] U. S. Const., Art. II, Sec. 4, Cl. 1.

[1] U. S. Const., Art. I, Sec. 6, Cl. 1.

[2] U. S. *v.* Insurgents, (1795) 2 Dall. (U. S.) 335; U. S. *v.* Mitchell, (1795) 2 Dall. (U. S.) 348; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75; Burr's Trial, 4 Cranch (U. S.) 469.

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criminal correspondence with foreign government, seditious conspiracy, recruiting soldiers or sailors to serve against the United States, and enlistment to serve against the United States. Of these crimes the punishments for treason and misprision of treason were enacted in 1790, and the punishment for criminal correspondence with foreign governments was enacted in 1799; all the other offenses mentioned in the chapter and the punishments therefor were declared by statutes enacted in 1861 and 1862 after the outbreak of the great Civil War.[3]

The federal decisions on the constitutional and statutory offense of treason are very few,[4] and show within what narrow limits the crime of treason is confined under our system.

Misprision of treason.

Of misprision of treason, which consists in concealing, or in failing to disclose and make known, the commission of the crime of treason, as soon as may be, it is sufficient to say that but three cases are known to the author in which the discussion of this crime has occurred.[5]

And as the other acts in the chapter on crimes against the existence of the government were passed

[3] Rev. Stat. U. S., Title LXX, Ch. 2, Secs. 5331–5338.

[4] U. S. *v.* Insurgents, (1795) 2 Dall. (U. S.) 335; U. S. *v.* Mitchell, (1795) 2 Dall. (U. S.) 348; U. S. *v.* Villato, (1797) 2 Dall. (U. S.) 370; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75; U. S. *v.* Pryor, (1814) 3 Wash. (U. S.) 234; U. S. *v.* Hanway, (1851) 2 Wall. Jr. (C. C.) 139; 1 Burr's Trial, 14–16; 2 Burr's Trial, 402, 405, 417; U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 265; U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 364; Confiscation Cases, (1873) 20 Wall. (U. S.) 92; Wallach *v.* Van Riswick, (1875) 92 U. S. 202; Windsor *v.* McVeigh, (1876) 93 U. S. 274.

[5] U. S. *v.* Wiltberger, (1820) 5 Wheat. (U. S.) 97; Confiscation Cases, (1872) 1 Woods (U. S.) 221; U. S. *v.* Tract of Land. (1871) 1 Woods (U. S.) 475.

after the Civil War was flagrant, the attempt to enforce them would have been in effect to make them *ex post facto* laws, so that they were not vigorously enforced.[6]

Duty to de facto government.

Treason is often described in the books as the greatest crime known to the law.[7] The individual guilty of treason is known as a traitor.[8] Every citizen owes to his government support and loyalty until he openly renounces his country and becomes a citizen or subject of another country, or his government is supplanted by another in a manner beyond his control. Thus if a *de facto* government is established over him in a manner beyond his control, by which the *de jure* government theretofore existing is entirely supplanted, that entitles the *de facto* government to his allegiance, and to obey it is not treason to the *de jure* government, even if that rightful or *de jure* government shall be afterwards restored.[9] But the doctrine of the English law has not always admitted the above rule, for in the cele-

"Since the adoption of the Constitution but few cases of indictment for treason have occurred, and most of them not many years afterwards." U. S. *v.* Hanway, (1851) 2 Wall. Jr. (C. C.) 201.

[6] *Ex p.* Lange, (1873) 18 Wall. (U. S.) 163.

[7] U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 265; Charge to Grand Jury, (1851) 2 Curt. (U. S.) 630, 30 Fed. Cas. No. 18,269; Charge to Grand Jury, (1861) 1 Bond (U. S.) 609; Charge to Grand Jury, (1861) 4 Blatchf. (U. S.) 518, 30 Fed. Cas. No. 18,270.

"Under the laws of the United States, the highest of all crimes is treason. It must be so in every civilized state; not only because the first duty of a state is self-preservation, but because this crime naturally leads to and involves many others destructive of the safety of individuals and of the peace and welfare of society." Charge to Grand Jury, (1851) 2 Curt. (U. S.) 633.

[8] U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693.

[9] Thorington *v.* Smith, (1868) 8 Wall. (U. S.) 1; Respublica *v.* Chapman, (1781) 1 Dall. (Pa.) 53; Keppel *v.* Petersburg R. Co., (1868) Chase (U. S.) 167, 14 Fed. Cas. No. 70,722.

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brated case of General Vane, who took no part in the execution of Charles I but subsequently commanded the Parliamentary Army, it was held that his plea that the Parliamentary government was *de facto* did not justify obedience to its commands, and Vane was executed.[1]

The law of treason in England is based on the English statute 25 Edw. III, stat. 5, c. 5. The definition of treason in our Constitution, Article III, Section 3, Clause 1, is taken from the third and fourth sections of the English act.[2] The American courts have followed the construction put upon the language by the English courts.[3]

Powers of Congress.

The Constitution having defined the crime of treason, it is beyond the power of Congress either to broaden or contract the definition of treason, or

[1] (1662) J. Kel. 14, 6 How. St. Tr. 119.

[2] U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693.

"The clause was borrowed from an ancient English statute, enacted in the year 1352, in the reign of Edward the Third, commonly known as the Statute of Treasons. Previous to the passage of that statute, there was great uncertainty as to what constituted treason. Numerous offences were raised to its grade by arbitrary constructions of the law. The statute was passed to remove this uncertainty, and to restrain the power of the crown to oppress the subject by constructions of this character. It comprehends all treason under seven distinct branches. The framers of our Constitution selected one of these branches, and declared that treason against the United States should be restricted to the acts which it designates." U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 371.

[3] U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 265; Charge to Grand Jury, (1851) 2 Curt. (U. S.) 630, 30 Fed. Cas. No. 18,269; U. S. *v.* Greiner, (1861) 4 Phila. (Pa.) 396, 18 Leg. Int. (Pa.) 149; U. S. *v.* Fries, (1799) 3 Dall. (Pa.) 515; U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 364; U. S. *v.* Hanway, (1851) 2 Wall. Jr. (C. C.) 200.

"The term [levying war] is not for the first time applied to treason by the Constitution of the United States. It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed

to punish as treason what is not defined to be treason in the Constitution, or to fail to punish as treason what the Constitution declares to be such.[4]

State constitutions and statutes.

In some of the States the State constitution defines the crime of treason against the States; in others it is left to the regulation of statutes.[5] For example, in a former constitution of Alabama the definition of treason was similar to that in the Constitution of the United States. In a case arising in that State for aiding a rebellion of slaves, it was said that while the crime contained several, but not all, of the elements of treason, it might be indicted as a separate crime, since it did not fall within the constitutional definition of treason.

In the State of Virginia, one of the oldest of the States, the constitutions of the State have not attempted to define the crime of treason against the State, but have left it to statutory enactment.

It has been held that the crime of constructive treason is not recognized in the United States.[6]

by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it." *Per* Marshall, C. J. in U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693.

"These terms, 'levying war,' 'adhering to enemies,' 'giving them aid and comfort,' were not new. They had been well known in English jurisprudence at least as far back as the reign of Edward III. They had been frequently the subject of judicial exposition, and their meaning was to a great extent well settled." Charge to Grand Jury, (1861) 1 Sprague (U. S.) 603.

[4] U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 371; U. S. *v.* Fries, (1799) 3 Dall. (Pa.) 515, 9 Fed. Cas. No. 5,126; Homestead Case, (1892) 1 Pa. Dist. 785.

[5] State *v.* McDonald, (1837) 4 Port. (Ala.) 449.

[6] *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75.

"The framers of our Constitution, who not only defined and limited the crime, but with jealous circumspection attempted to protect their limitation by providing that no person should be convicted of it, unless on the testimony of two witnesses to the same overt act,

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Of Dual Treason.

Treason against Nation and against State compared.

A citizen may commit a dual act of treason, by reason of his act being equally treasonable against the distinct sovereignties of the Nation and the State. The act may be a single act, yet the offenses against the Nation and the State be distinct and punishable by both.

Treason against the United States is committed by invasion of national sovereignty.[7] Treason against a State is committed by acts directed against the sovereignty of the State, as an attempt to overthrow the State government.[8]

It was said in *U. S. v. Bollman*,[8*] that the intention with which treason is committed determines the species of treason, and that no injury, even if it extend to an attempt to oppose and destroy the laws and government of any one of the States, will amount to treason against the United States.

or on confession in open court, must have conceived it more safe that punishment in such cases should be ordained by general laws, formed upon deliberation, under the influence of no resentments, and without knowing on whom they were to operate, than that it should be inflicted under the influence of those passions which the occasion seldom fails to excite, and which a flexible definition of the crime, or a construction which would render it flexible, might bring into operation. It is, therefore, more safe as well as more consonant to the principles of our Constitution, that the crime of treason should not be extended by construction to doubtful cases; and that crimes not clearly within the constitutional definition, should receive such punishment as the legislature in its wisdom may provide." *Per* Chief Justice Marshall, in *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 127.

[7] U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 265.

[8] Charge to Grand Jury, (1842) 1 Story (U. S.) 614; People *v.* Lynch, (1814) 11 Johns. (N. Y.) 550; *Ex p.* Quarrier, (1866) 2 W. Va. 569.

[8*] (1807) 4 Cranch (U. S.) 127.

In the case of *Ex p. Quarrier,*[9] it was said that if, by the act, treason is committed against both State and Federal governments, the traitor is liable to punishment by each sovereignty.

But in the case cited, a citizen of West Virginia, in the great rebellion, waged war, as a Confederate soldier, against the United States, and it was held that although West Virginia was a component part of the Union his act was not treason against her, for treason against her could only be committed by acts done directly against her State government.

John Brown's raid.

Perhaps the most widely known act of treason against both sovereignties, in our country, is the celebrated but unreported case of *Virginia v. John Brown* and others. In the year 1859, in a time of profound peace, John Brown and a party of armed followers suddenly appeared in the night time at Harper's Ferry, Virginia, seized the United States arsenal and arms, and from that position, in which they fortified themselves, sent forth small parties to seize sundry citizens of Virginia and to incite Virginia slaves to insurrection. While in possession of the United States arsenal they fired upon citizens and killed and wounded fifteen persons. It subsequently developed that they were proceeding under a plan of government formulated in Canada, which contemplated the liberation of the slaves and the installation of a government wholly inconsistent with the existing governments, Federal and State. Both Federal and State authorities employed their military forces to suppress this violent outbreak. The stronghold in which Brown and a few companions

[9] (1866) 2 W. Va. 569.

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had intrenched themselves, an engine house on the Harper's Ferry arsenal reservation of the United States, was carried by assault by a party of United States marines, under a heavy fire from Brown and his party, and a marine was killed before the insurgents were captured.

Offense against the United States.

The acts committed by Brown and his party fell clearly within all the definitions of what constitutes the actual levying of war against the United States. They had formed themselves into a body and marched with weapons, offensive and defensive, with a public design that was unmistakable. This had been held to constitute levying war.[9*] They had by force of arms seized, occupied, and appropriated an arsenal of the United States, and turned its guns upon Federal authority, which was an unequivocal act of war.[1] They had held it against the government.[2] They had refused to surrender, and resisted, with murder, the attempt of the government to repossess itself of its property. All these constituted treason against the United States.

Offense against the State.

Their offenses were equally treason against the State of Virginia, whose laws denounced as treason, with the penalty of death, and without pardoning power in the executive, the acts of —

1. Establishing, without authority of the legislature, any government in the State, or holding or executing in such usurped government

[9*] Rex *v.* Vaughan, (1696) 13 How. St. Tr. 531.

[1] Charge to Grand Jury, (1861) 1 Sprague (U. S.) 602; Charge to Grand Jury, (1861) 4 Blatchf. (U. S.) 518, 30 Fed. Cas. 18,270.

[2] Foster's Crown Law, 208.

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any office, or professing allegiance or fidelity to it;

2. Or resisting the execution of the laws, under color of its authority.
3. Advising or conspiring with slaves to rebel or make insurrection, or with any person to induce a slave to rebel or make insurrection, whether such rebellion or insurrection be made or not.

The above laws had been on the statute-books of Virginia for many years before this outbreak.

The prisoners were delivered over by the military forces of the United States to the State authorities of Virginia, and were promptly tried for treason against the State, convicted, condemned, and hanged; so that the United States had no opportunity to prosecute them for the offense of treason against itself. The excitement of the times upon the subject of slavery was such that, although the acts of John Brown and his associates were plainly treason against the United States and the State of Virginia, indefensible on any plea but that of insanity, and although Brown himself refused to allow that plea to be interposed in his behalf, and declared that he had a fair trial, his execution was denounced as an act of murder by many anti-slavery people, and he is still canonized as "John Brown the Martyr."

The Elements of the Offense.

Intent and overt act essential.

All the books concur that an act of treason is composed of two elements, to wit: the intention, and the overt act.[3] The intent alone is not sufficient to

[3] U. S. *v.* Hanway, (1851) 2 Wall. Jr. (C. C.) 169; U. S. *v.*

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constitute treason. Nor are mere words, whether spoken, written, or printed, of themselves treason.[4] Words spoken are admissible to establish treasonable intent, but little weight is to be attached to the mere declaration of a party.[5]

What is an overt act.

What constitutes an overt act has been the subject of much discussion. An overt act is undoubtedly essential to the levy of war. To that there must be a combination or association of people united by a common purpose in a conspiracy directed against the government.[6]

The time of the formation of a treasonable design is immaterial. The preconcerted action to which a number of people are privy is a necessary element of an intention to levy war. The conspiracy may be proven either by the declarations of the individuals or by proof of the proceedings at the meetings. After proof of the conspiracy to effect a trea-

Pryor, (1814) 3 Wash. (U. S.) 234; Law of Treason, (1842) 1 Story (U. S.) 614; Reg. *v.* Gallagher, (1883) 15 Cox (C. C.) 291; Rex *v.* Stone, (1796) 6 T. R. 527; Case of Armes, (1596) Popham 121, Foster 208; Reg. *v.* Frost, (1839) 9 C. & P. 129, 38 E. C. L. 70.

"The plain meaning of the words 'overt act,' as used in the Constitution and the statute, is an act of a character susceptible of clear proof, and not resting in mere inference or conjecture. They were intended to exclude the possibility of a conviction of the odious crime of treason, upon proof of facts which were only treasonable by construction or inference, or which have no better foundation than mere suspicion." Charge to Grand Jury, (1861) 1 Bond (U. S.) 611, 30 Fed. Cas. No. 18,272.

[4] Law of Treason, (1861) 5 Blatchf. (U. S.) 549; Charge to Grand Jury, (1861) 1 Bond (U. S.) 609; State *v.* M'Donald, (1837) 4 Port. (Ala.) 449; Chichester *v.* Philips, (1680) T. Raym. 404.

"The intention, being the chief constituent of the offense, must be proved by some development of less equivocal import." State *v.* M'Donald, (1837) 4 Port. (Ala.) 449.

[5] Rex *v.* Cook, (1696) 13 How. St. Tr. 391.

[6] Reg. *v.* Frost, (1839) 9 C. & P. 129, 38 E. C. L. 70.

sonable design the deed of one, in pursuance of that design, is the act of all.[7]

The overt act contemplated by the language of the Constitution is generally the actual employment of force by a collection of men; but, all preparatory arrangements having been completed, the assembling of a number of men to execute the treasonable design is an overt act of levying war. Not so, however, unless they are in condition to carry out their treasonable design.[8]

Quantum of force necessary.

The quantum of the force employed is immaterial. This is generally displayed by the use of employment of arms and military array, but these are not indispensably requisite.[9] There must, however, be in all cases some unequivocal act of resistance, which, in its nature, shows a purpose to resort, if necessary, to conflict with the government.[1]

What constitutes levying war.

The seizure of a fort or arsenal by a body of men;[2] holding the same;[3] the mere cruising of an armed vessel, though no ships are encountered;[4] the marching of a body of men immediately to perform their treasonable design; the moving from a particular to a general place of rendezvous, are all

[7] Rex *v.* Regicides, (1660) 5 How. St. Tr. 1224; Reg. *v.* McCafferty, (1867) 10 Cox C. C. 603; Rex *v.* Dammaree, (1710) 15 How. St. Tr. 609.

[8] U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693.

[9] Messenger's Trial, J. Kel. 70, and cases above cited.

[1] Hawk. P. C. 55, and cases of U. S. *v.* Burr and others, above cited.

[2] Charge to Grand Jury, (1861) 1 Sprague (U. S.) 602; Charge to Grand Jury, (1861) 4 Blatchf. (U. S.) 518, 30 Fed. Cas. No. 18,270.

[3] Foster's Crown Law 208.

[4] U. S. *v.* Greiner, (1861) 4 Phila. (Pa.) 396, 18 Leg. Int. (Pa.) 149; Rex *v.* Vaughan, (1696) 13 How. St. Tr. 486.

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unequivocal acts of levying war. The design need not be to overthrow the entire government. It is sufficient if it contemplates the overthrow of government or the suppression of laws in a particular locality, or even the coercion of the government in state matters or acts of sovereignty.[5] If the demonstration be only to subserve some private purpose, such as individual profit, the removal of a particular nuisance, a private quarrel, or a demonstration of the strength and number of a political party to procure the liberation or mitigation of punishment of political prisoners, the offense is not treason.[6]

Rioting and levying war distinguished.

While rioting and the levying of war against the government are closely allied, there is a distinction. In riots the object of the disturbances is to satisfy a particular grievance; in treason the intention is to overthrow the government.[7] The question is always one of intention, to be gathered from the particular transaction. The English doctrine of constructive levying of war, which holds various forms of rioting to be in effect levying war against the government,

[5] U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 364; Charge to Grand Jury, (1842) 1 Story (U. S.) 614; Homestead Case, (1892) 1 Pa. Dist. 785; U. S. *v.* Vigol, (1795) 2 Dall. (U. S.) 346; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75.

"In respect to the treasonable design, it is not necessary that it should be a direct and positive intention entirely to subvert or overthrow the government. It will be equally treason, if the intention is by force to prevent the execution of any one or more general and public laws of the government, or to resist the exercise of any legitimate authority of the government in its sovereign capacity." Charge to Grand Jury, (1842) 1 Story (U. S.) 616.

[6] U. S. *v.* Hanway, (1851) 2 Wall. Jr. (C. C.) 205, and cases above cited.

[7] 1 Hale P. C. 145.

"When the object of an insurrection is of a local or private nature, not having a direct tendency to destroy all property and all

has not been favorably regarded by the American judiciary. It was thought to be too great a stretch of the constitutional definition of treason, and in the case of *United States v. Hanway (supra)* Mr. Justice Grier said: "The better opinion there [in England] at present seems to be that the term 'levying war' should be confined to insurrections and rebellions for the purpose of overturning the government by force and arms. Many of the cases of constructive treason quoted by Foster, Hale, and other writers would perhaps now be treated merely as aggravated riots or felonies."

Who are enemies.

The words "adhering to enemies" have received frequent construction.[8] The term "enemies," as used in the Constitution, applies only to the subjects of a foreign power in a state of open hostility to this country. The inhabitants of a neutral country may, by participation in acts of hostility, become enemies, but they are so regarded only while so engaged. Even upon capture neutrals cease to be enemies, and become entitled to the rights of subjects of a neutral country.[9]

government by numbers and armed force, it will not amount to treason; and in these and other cases that occur, the true criterion is the intention with which the parties assembled." U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 271.

[8] Rex *v.* Vaughan, (1696) 13 How. St. Tr. 525; Charge to Grand Jury, (1861) 1 Sprague (U. S.) 607.

[9] Sparenburgh *v.* Bannatyne, (1797) 1 B. & P. 163.

The character of alien enemy arises from the party being under the allegiance of the state at war with us; the allegiance being permanent, the character is permanent, and on that ground he is alien enemy, whether in or out of prison. But a neutral, whether in or out of prison, cannot, for that reason, be an alien enemy; he can be alien enemy only with respect to what he is doing under a local or temporary allegiance to a power at war with us. When the

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Giving aid and comfort.

The words "adhering," "giving aid and comfort," have also been construed. Joining the enemy during time of war is a most emphatic way of giving aid and comfort to the enemy.[1] Nothing can excuse that offense except compulsion under fear of immediate death.[2] The burden of proof in such case is on the accused. He must prove not only coercion, but that he quitted the enemy's service as soon as possible. Giving aid and comfort to the enemy,

allegiance determines, the character determines. Sparenburgh *v.* Bannatyne, (1797) 1 B. & P. 163.

"The term 'enemies,' as used in the second clause, according to its settled meaning at the time the Constitution was adopted, applies only to the subjects of a foreign power in a state of open hostility with us. It does not embrace rebels in insurrection against their own government. An enemy is always the subject of a foreign power who owes no allegiance to our government or country." U. S. *v.* Greathouse, (1863) 2 Abb. (U. S.) 372, *per* Field, J.

The duty of allegiance to the United States owed by a citizen of one of the southern States, at a time when its revolutionary secession was threatened but had not been consummated, could not be affected by any conflicting and forced allegiance to the State. He could not then, as a citizen of the State, pretend to be a public enemy of the United States, in any sense of the word "enemy" which distinguishes its legal meaning from that of traitor. U. S. *v.* Greiner, (1861) 4 Phila. (Pa.) 396, 18 Leg. Int. (Pa.) 149.

[1] Gordon's Case, (1746) 1 East P. C. 71; M'Growther's Case, (1746) 1 East P. C. 71, Foster's Crown Law 13; U. S. *v.* Greiner, (1861) 4 Phila. (Pa.) 396, 18 Leg. Int. (Pa.) 149.

"The words in the definition, 'adhering to their enemies,' seem to have no special significance, as the substance is found in the words which follow — 'giving them aid and comfort.'" Charge to Grand Jury, (1861) 1 Bond (U. S.) 609.

"In general, when war exists, any act clearly indicating a want of loyalty to the government, and sympathy with its enemies, and which, by fair construction, is directly in furtherance of their hostile designs, gives them aid and comfort. Or, if this be the natural effect of the act, though prompted solely by the expectation of pecuniary gain, it is treasonable in its character." Charge to Grand Jury, (1861) 1 Bond (U. S.) 611, 30 Fed. Cas. No. 18,272.

[2] Hawk. P. C. 54; Respublica *v.* M'Carty, (1781) 2 Dall. (Pa.)

such as supplying to the enemy arms, ammunition, provisions, etc., is evidence of lack of loyalty. Any material assistance to enemies or rebels is treason.[3]

Communicating with or advising the enemy, or furnishing him with valuable information, even where the letters are intercepted, is an act of treason.[4] And delivering a fort by bribery or other sympathy with the enemy is direct assistance to the enemy.[5] It is otherwise when such an act is the result of cowardice or imprudence. Even that act is, however, punishable by martial law. Cruising on an armed vessel which belongs to the hostile country is an overt act of aid and comfort to the enemy. All of the above instances being necessarily direct

86; U. S. *v.* Vigol, (1795) 2 Dall. (U. S.) 346; Trial of Regicides, J. Kel. 13.

"In the eye of the law, nothing will excuse the act of joining an enemy but the fear of immediate death; not the fear of any inferior personal injury, nor the apprehension of any outrage upon property." Respublica *v.* M'Carty, (1781) 2 Dall. (Pa.) 86.

[3] Foster's Crown Law, 217; U. S. *v.* Pryor, (1814) 3 Wash. (U. S.) 234; U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693; Charge to Grand Jury, (1861) 1 Bond (U. S.) 609, 30 Fed. Cas. 18,272; Hanauer *v.* Doane, (1870) 12 Wall. (U. S.) 347; Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147.

"He who, being bound by his allegiance to a government, sells goods to the agent of an armed combination to overthrow that government, knowing that the purchaser buys them for that treasonable purpose, is himself guilty of treason or a misprision thereof. He voluntarily aids the treason. He cannot be permitted to stand on the nice metaphysical distinction that, although he knows that the purchaser buys the goods for the purpose of aiding the rebellion, he does not sell them for that purpose. The consequences of his acts are too serious and enormous to admit of such a plea. He must be taken to intend the consequences of his own voluntary act." Hanauer *v.* Doane, (1870) 12 Wall. (U. S.) 342; see also Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147.

[4] Foster's Crown Law, 217; Rex *v.* Gregg, (1708) 14 How. St. Tr. 1376.

[5] 1 Hale P. C. 168.

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attacks on his government by the citizen, his motive is immaterial.[6]

Evidence of reputation.

Treason being a crime peculiar in its nature, to which there is not attached the odium or disrepute connected with other felonies, evidence tending to show former good reputation has not the same weight as it may have in ordinary crimes, like burglary or arson, as tending to show the improbability of the prisoner's commission of the offense, since the purest motives indulged in by the most honorable men are not inconsistent with the offense of treason. This was said in *Dammaree's Case.*[7] But it is not a satisfactory reason. For more odium and disrepute are attached to the crime of treason than to any other known to the law. It is true that it is a peculiar crime and has sometimes manifested itself in men who, prior to its commission, had seemed above such baseness; whereas the commission of burglary or arson is generally the culmination of a previously bad record. And this is about all that can be said of the reason for the distinction.

All participants principals.

Consideration of the evidence required to prove treason, and of the defense, is omitted as beyond the scope of this treatise, and the subject may be con-

[6] Charge to Grand Jury, (1861) 1 Bond (U. S.) 609, 30 Fed. Cas. No. 18,272; Hanauer *v.* Doane, (1870) 12 Wall. (U. S.) 342; Sprott *v.* U. S., (1874) 20 Wall. (U. S.) 459; Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147.

The motives by which a prisoner in the hands of the enemy, seeking means of escape, was induced to attempt the commission of an act constituting the crime of treason, and by which there are the strongest reasons to believe that he was most sincerely actuated, would certainly palliate the enormity of the crime. U. S. *v.* Pryor, (1814) 3 Wash. (U. S.) 234.

[7] Rex *v.* Dammaree, (1710) 15 How. St. Tr. 604.

cluded with the remark that treason is a crime of so high a nature that it does not admit of accessories, but all who are in any way connected with it are principals.[8]

[8] As respects the order of trial, however, the whole reason of the law, relative to the principal and the accessory, seems to apply in full force to a case of treason committed by one body of men in conspiracy with others who are absent. Whether the adviser of an assemblage be punishable with death as a principal or as an accessory, his liability to punishment depends upon the degree of guilt attached to an act which has been perpetrated by others; and which, if it be a criminal act, renders them guilty also. His guilt, therefore, depends on theirs; and their guilt cannot be legally established in a prosecution against him. *Per* Marshall, C. J., in U. S. *v.* Burr, (1807) 25 Fed. Cas. No. 14,693.

For a valuable citation of authorities concerning the elements constituting treason, the proofs necessary to establish it, and the defenses thereto, see Vol. 28, Am. & Eng. Encyc. of Law (2d Ed.) 457–471.

CHAPTER IV.

OF THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CITIZEN.

Chapter IV.

Origin of rights, privileges, and immunities.

THE rights, privileges, and immunities now enjoyed by citizens of the States composing the United States, whether as citizens of the States or of the United States, originated in rights possessed or claimed by the inhabitants of the thirteen American colonies, while they were dependencies of Great Britain. The struggle of the American colonists for independence was based upon the claim that they were denied, by the parent government, rights, privileges, and immunities which were their common heritage as British freemen, or which had from time to time been granted specifically to the American colonies.

No written chart in existence, then or now, has ever attempted to enumerate, classify, and define in one succinct expression, the rights, liberties, and franchises possessed by English subjects, nor is it the purpose of this volume to attempt to do that. It is sufficient to say that the liberties and right of self-government of the British people, beginning with the declarations of Magna Charta, have been ascertained and declared from time to time, during six centuries of conflict between the people of the British realm and their successive sovereigns, until they are now well established and quite thoroughly understood.

Liberty in England and in the United States.

Notwithstanding the British people have retained in their government the form of a limited monarchy, they have established for themselves, as against their constitutional monarch, a measure of popular sovereignty and personal liberty as great as that possessed by any other people in the world. Our boast is that ours is a free republic; that it is doubtful whether, although we have a president instead of a king, and a supreme court with certain power to control both executive and legislative action, the King of England, on the whole, possesses as much independent authority as the President of the United States.

Liberty in the Colonies.

Although the struggle of the American colonists was based upon the claim that the parent government denied the inhabitants of the colonies the guaranteed rights of British citizens, the American colonists, even under British dominion, were accorded and actually enjoyed many rights, privileges, and franchises, peculiar to themselves, not enjoyed by Englishmen at home, or even of British origin; some of which have not, to this day, been adopted in their entirety in England.

Source of American Plan of Government and Rights of Citizenship.

The influence of Holland.

Many of the declarations of popular rights set forth in the American Declaration of Independence were of rights which were not of English origin. The American colonists had become familiar with the rights of citizenship possessed in other countries, both from the fact that some of them resided in Holland for a time, before they came to America, and

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from the further fact that the New York colony was essentially Dutch in its original settlement and government. It is plain to see, by comparison with other historic documents, that the Declaration of Independence of 1776 was modeled, to a large extent, not upon English precedents, but upon the written constitution of the Netherlands Republic, called "The Union of Utrecht," of 1579.

The manifesto issued by the rebels at the time of Bacon's Rebellion in Virginia in 1676 contains much from the same source. The Union of Utrecht and Bacon's Rebellion antedated, one by one hundred years and the other by three years, the Exclusion Act of 1679, by which James II of England was deposed, and which, by some writers, has been referred to as the source from which the claims set forth in the Declaration of Independence were derived.

American tenets not derived from England—instances.

Nor did the American ideas of a written constitution and a supreme court emanate altogether from Englishmen. They were the results of the coöperative labors of Puritans and Cavaliers, Dutchmen, Huguenots, and Scotch-Irishmen, assembled in convention in America, working for a common end, upon models derived from many countries with whose governments they were familiar. For example, the demand for the separation of Church and State, which is a leading tenet of American government, is not of British origin. Virginia was foremost in this contention. She abolished tithes and forfeited glebe lands. The change was brought about through the influence of Patrick Henry, a Scotch dissenter; and of Thomas Jefferson, a man

of Welsh origin, with views derived from a study of Dutch precedents.

So, too, the abolition of privileged classes was distinctly anti-English.

Transfer of property—elections—public prosecutors.

The American system of land tenures, the abolition of entails and primogenitures, and our methods of transfer of real estate, are all anti-English in their origin. Entails and primogenitures were cherished institutions of England. Our system of transferring real estate by the registration of deeds came from Holland, and has not, even to the present day, been fully adopted in England. Our laws governing the transfer of personal property and our whole system of mercantile law are adaptations of Continental and Roman methods, modified so as to make them applicable to our modern conditions. We owe nothing to England for our system of elections or for our public prosecutors. The idea of a public prosecutor or commonwealth's attorney came from Holland.

Charities, hospitals, and prisons.

Our system of charitable institutions, hospitals, and prisons is not modeled upon English precedents. The charitable institutions, hospitals, and prisons of the colonies antedated those in England. The first of these established in the American colonies were copied from Dutch models, and the admirable system now existing in England is derived largely from a study and adoption of those which were first established in the Dutch colony of New York and in the Quaker colony of Pennsylvania.

Religious toleration.

So, too, the American citizen derived his principles of religious toleration, not from England, but from the Dutch. As late as 1663, when the repre-

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sentatives of the Crown in the English colonies were, under orders from England, persecuting Quakers and Anabaptists and demanding that they take the oath of allegiance and conformity or suffer punishment; when Puritans were driving Pilgrims from Massachusetts into Rhode Island, and Virginians placing the King's broad arrow on the houses of dissenters in Maryland, the Dutch colony of New York was receiving orders from Amsterdam proclaiming that the conscience of men ought to remain free. The orders read: "Let every one remain free as long as he is modest, moderate, his political conduct irreproachable, and as long as he does not offend others or oppose the government."[1] This was twenty years before Penn came to America, and, even after he came, the Scotch-Irish and Germans were driven from Pennsylvania by Logan's oppressive administration of the Quaker laws, and sought asylum in the Shenandoah valley of Virginia.

The Pilgrims in Rhode Island proscribed Catholics and deprived them of suffrage, on account of their religion, from 1719 to 1783.

Mr. Madison is authority for the statement that the example of Holland led to the constitutional provision forbidding Congress from making any enactment "respecting an establishment of religion" or abridging the freedom of the press.

Educational systems.

Perhaps there is no other thing in which the citizen of the United States takes greater pride than in our system of public education. The privilege of public-school education for his children is possessed by every citizen of the United States in the

[1] Broadhead's History of New York, 1770.

State of which he is a citizen, no matter how humble or ignorant he may be or how limited his own rights. This privilege, like the others named, is distinctly not of English origin. At the time of the departure of the original colonists from England for America, no system of public education existed in Great Britain. None exists there to-day, comparable, in thoroughness, with our own. Long residence in Holland made some of the earliest American settlers familiar with the benefits of public education and the advantages of the free school system of the Dutch. But a thorough system of free education was installed in the Dutch colony of New York fully twenty years before any school system was adopted by the New England colony. Sparseness of population in the southern colonies rendered free schools almost impracticable there. But they were established in the populous Dutch communities and among the Scotch-Irish of the Shenandoah valley in Virginia, from the time of the earliest settlements there.

School lands in the Northwest Territory.

Notwithstanding the southern colonies were backward, the greatest impetus to public education in the Northwest Territory, after the colonies were independent, came from the southern section; for when Virginia ceded her rights in the Northwest Territory to the Federal government, she demanded through her representatives in Congress, Richard Henry Lee and Paul Carrington, the condition in the Ohio ordinances of 1787, requiring that alternate sections of the public lands should be dedicated to purposes of public education.[2]

[2] "The practice of setting apart section No. 16 of every township of public lands, for the maintenance of public schools, is traceable to the ordinance of 1785, being the first enactment for the

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Having now traced the ideas of the American colonists concerning plans of government and rights of citizenship to the sources whence they sprung, let us next consider how far these rights have been incorporated in the governments which they established.[3]

Rights of Citizens of the States.

Let us first examine the rights of citizens as citizens of the States; for these clearly antedate whatever rights they possess as citizens of the United States, by a period equal to that which elapsed between the acknowledgment of the independence of the thirteen independent colonies by Great Britain, and the formation of the Union by the States themselves.

No written enumeration of rights.

No State in the Union has ever sought to embody in one written chart a full expression of all the rights, privileges, and immunities of its citizens. Nor will

disposal by sale of the public lands in the western territory. The appropriation of public lands for that object became a fundamental principle by the ordinance of 1787, which settled terms of compact between the people and States of the northwestern territory, and the original States, unalterable except by consent. One of the articles affirmed that 'religion, morality, and knowledge, being necessary for good government and the happiness of mankind,' and ordained that 'schools, and the means of education, should be forever encouraged.' This principle was extended, first by congressional enactment (1 Stat. at Large, 550, § 6), and afterward, in 1802, by compact between the United States and Georgia, to the southwestern territory. The earliest development of this article, in practical legislation, is to be found in the organization of the State of Ohio, and the adjustment of its civil polity, according to the ordinance, preparatory to its admission to the Union." Cooper *v.* Roberts, (1855) 18 How. (U. S.) 177.

[3] So persuasive of all our early acts were the examples of the Dutch that even our national emblem is singularly like the flag of the United Netherlands.

the attempt now be made. On this subject we shall content ourselves with the language of Mr. Justice Washington, construing Section 2 of Article IV of the Constitution of the United States, which provides: "Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." He said:

Justice Washington's classification.

"The inquiry is, What are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole." [4]

Mr. Justice Miller, in the Slaughter-House Cases,[5] said, with reference to this observation of Mr. Justice Washington:

[4] Corfield *v.* Coryell. (1823) 4 Wash. (U. S.) 371. See also Ward *v.* Maryland, (1870) 12 Wall. (U. S.) 430.

[5] 16 Wall. (U. S.) 76.

"The Constitution does not define the privileges and immunities

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"The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted."

While it is undoubtedly true that the attempt to enumerate these rights of citizenship would be more tedious than difficult, and while it may be unnecessary to enumerate and classify them, especially as the order of their enumeration varies in the different States, it seems proper to advert to the earlier expressions in the first bill of rights framed by one of the original States, to ascertain what our Revolutionary forefathers conceived to be the most important of the rights for which they were contending.

State Bills of Rights.

The Virginia Bill of Rights.

The Bill of Rights of Virginia, drafted by George Mason, is perhaps the most famous of all these bills of rights, and may be taken as an example, as it was made the model of many States afterwards formed. It was unanimously adopted by the Virginia convention, June 12, 1776.[6] It recites the following as basic and foundational principles of government, and declares that they pertain to the good people of the commonwealth and their posterity:

Life, liberty, and property.

1. That all men are by nature equally free, independent, and have certain inherent rights,

of citizens. For that definition we must look elsewhere." Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 170.

[6] Revised Code of Virginia, 1819, Vol. I, page 31.

of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Derivation of power.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable.

Government by and for the majority.

3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various forms and modes of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it in such manner as shall be judged most conducive to the public weal.

Exclusive emoluments and privileges.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

5. That the legislative and executive powers of the State should be separate and distinct

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from the judiciary; and, that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into the body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all or any part of the former members to be again eligible, or ineligible, as the laws shall direct.

Right of suffrage.

6. That election of members to serve as representatives of the people, in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with and attachment to the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good.

Suspension of laws.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Rights of persons charged with crime.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without

whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

Bail, fines, and punishments.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Searches and seizures.

10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.

Jury trial in civil cases.

11. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

Freedom of the press.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

The military power.

13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Uniform government.

14. That the people have a right to uniform government; and therefore, that no government

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separate from, or independent of, the government of Virginia ought to be erected or established within the limits thereof.

Adherence to fundamental principles.

15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

Religious freedom.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience, and that it is the mutual duty of all to practice Christian forbearance, love and charity, towards each other.

Effect on the Declaration and Constitution.

This immortal declaration of the principles of popular sovereignty has been set forth at length because it embodies in itself the substance of all similar declarations in the other colonial conventions, and was either incorporated into the Declaration of Independence itself, which was adopted twenty-two days later, or into the earliest amendments of the Constitution of the United States. Of the first ten amendments to the Constitution of the United States, which may be considered as adopted contemporaneously with the Constitution itself, six merely reaffirm the principles enunciated in George Mason's bill of rights.

National Declaration of Independence.

When we come to a study of the Declaration of Independence itself we find a reassertion of princi-

ples concerning the equality of men, their unalienable rights, that government is instituted to secure those rights, that it derives its just powers from the consent of the governed, and the right of the people, when it becomes destructive of those ends, to alter or abolish it and institute a new government.

After declaring that long established governments should not be changed for light and transient causes, it proceeds to arraign the British government for a long train of abuses and usurpations. We may gather, from the enumeration of those abuses, the following claims made by the revolutionists concerning the rights, privileges, and immunities of citizens:

1. The right of representation in the legislature, a right inestimable to them.
2. The right to have representative bodies assembled at usual and comfortable places convenient to the depository of their public records.
3. The right to have frequent sessions of the legislature.
4. The right to have a system of naturalization laws.
5. The right to have an independent judiciary.
6. The right to oppose a multitude of offices.
7. The right to oppose standing armies in time of peace.
8. The right to have the civil power superior to the military power.
9. The right to resist quartering of armed troops among them.
10. The right to trade with the outside world.

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11. The right to a voice in taxation.
12. The right to trial by a jury of the vicinage.
13. The right of local self-government.

The Federal Constitution.

Guarantees to individuals under the Articles of Confederation.

We have already seen that during the period in which the States coöperated under articles of confederation, the rights, privileges, and immunities of their citizens were derived exclusively from their respective States, and that the power of the United States did not extend to the control of the individual, save in a few limited and specified cases; and that as then constituted the United States did not attempt to grant or guarantee to the individual citizen any rights, privileges, or immunities, save to citizens of one State in another State.[7]

Extension of guarantees under the Constitution.

When, upon the adoption of the Federal Constitution, Federal power operated directly upon individual citizens of the United States, the number of Federal guarantees of their rights was extended also. These guarantees were the necessary correlatives of the specific powers granted to the Federal government, and are the supreme law of the land on the subjects to which they refer.

[7] "The Confederation was a league of friendship of the States with each other, so declared in the articles and entered into 'for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.' But its articles did not form a constitution or ordinance of government, with power to enforce its provisions upon each other, or even a compact having any coherence or binding force other than that of a league of friendship, which its members only claimed them to constitute." Wharton *v.* Wise, (1894) 153 U. S. 167.

Limitations of Federal power.

But it by no means follows from this that the Federal government is supreme concerning all the rights, privileges, and immunities of the citizen. On the contrary, while it is supreme in its sphere and possesses ample authority to enforce the powers expressly delegated to it by the Constitution, it is only a government of delegated and limited powers, and the States, in forming it, expressly retained and reserved in themselves the absolute control, direction, and sovereignty over their citizens concerning a vast residuum of rights, privileges, and immunities which, prior to the adoption of the Constitution, they had regulated exclusively.[8] For instance, it has never been contended that the Constitution, as originally framed, created in the Federal government any power to establish any code of municipal law applicable to the States composing it, regulative of all private rights between man and man in society, or that Congress may usurp the powers of State legislatures concerning such legislation. The Supreme Court of the United States has repeatedly taken occasion to point out that no such power exists, either under the original Constitution or by virtue of any

[8] "A reasonable interpretation of that instrument [the Federal Constitution] necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the States, unless where the Constitution has expressly, in terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the States, or there is a direct repugnancy or incompatibility in the exercise of it by the States. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the State in which the same shall be, for forts, arsenals, dock-yards, etc.; of the second class, the prohibition of a State to coin money or emit bills of credit; of the third class, as this court have already held, the power to establish an uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. In all other

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of the amendments.[8*] As we shall see later, a vast amount of litigation which has arisen under the constitutional amendments has been based upon a confused notion that the XIII, XIV, and XV Amendments in some way altered and extended the general scope of Federal powers, even to the point of effecting this fundamental change. But an unbroken line of Federal decisions has denied that such a change in the organic structure of the Federal government was either contemplated or effected by the amendments, and points out that the legislation which Congress is authorized to enact under the amendments is not general legislation upon the rights of citizens, but only certain corrective legislation, if such be necessary, to counteract State legislation prohibited by the amendments upon special subjects named in the amendments.

Construction of the constitutional amendments.

When we come to examine the multitudinous decisions of the Supreme Court on questions which have arisen under the amendments it will be seen

cases not falling within the classes already mentioned, it seems unquestionable that the States retain concurrent authority with Congress, not only upon the letter and spirit of the Eleventh Amendment of the Constitution, but upon the soundest principles of general reasoning. There is this reserve, however, that in cases of concurrent authority, where the laws of the States and of the Union are in direct and manifest collision on the same subject, those of the Union, being 'the supreme law of the land,' are of paramount authority, and the State laws, so far, and so far only, as such incompatibility exists, must necessarily yield." Houston *v.* Moore, (1820) 5 Wheat. (U. S.) 49. See also M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 405; Cohen *v.* Virginia, (1821) 6 Wheat. (U. S.) 414; Ableman *v.* Booth, (1858) 21 How. (U. S.) 516; Legal Tender Cases, (1870) 12 Wall. (U. S.) 545; Tarble's Case, (1871) 13 Wall. (U. S.) 406; *Ex p.* Siebold, (1879) 100 U. S. 398; Chinese Exclusion Case, (1889) 130 U. S. 604; *In re* Quarles, (1895) 158 U. S. 535.

8* Civil Rights Cases, (1883) 109 U. S. 3.

that the cases have for the most part not originated in any alleged act of the Federal government invading the sphere of State action, but upon the contention made by citizens of the States that Federal powers, as enlarged by the amendments, are much more far-reaching and restrictive upon State powers than the Federal courts themselves have been willing to admit. The decisions rendered by the Supreme Court have in an overwhelming majority of cases been against the broad effect of the constitutional amendments as authorizing extended Federal powers, or as restricting State powers, contended for by the citizens; and they declare unanimously the continuing power of the States, notwithstanding the amendments, to regulate exclusively the rights, privileges, and immunities of citizens upon the matters in issue, subject only to the particular limitations named in the amendments.[9]

[9] "A State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. By virtue of this, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained in the manner just stated. All those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called 'internal police,' are not thus surrendered or restrained; and consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive." New York *v.* Miln, (1837) 11 Pet. (U. S.) 139.

"Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the confederate government, which acted, with powers greatly restricted, only upon

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Seeing now that the rights, privileges, and immunities of the citizens are dependent, for acknowledgment and protection, upon dual governments, just as the allegiance of the citizen is due to dual governments, let us next consider the safeguards and protections of those rights offered to the citizen by the Federal and State governments. And, as the Federal government, although limited in its sphere, is supreme, and as all other rights, not derived from or guaranteed by it, depend for their recognition and protection upon the States, the orderly method of consideration would seem to be, to inquire first what rights of the citizen the Federal government grants or undertakes to protect, and what it has neither granted nor undertaken to guarantee. For all rights not so granted or guaranteed by the Federal government are dependent for their existence and their continuance upon the State of which the individual is a citizen.[1]

the States. But in many articles of the Constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in *The Federalist*, thus: 'The Federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes.'" Lane County *v.* Oregon, (1868) 7 Wall. (U. S.) 76.

[1] Under the very peculiar constitution of this government, although the citizens owe supreme allegiance to the Federal government, they owe also a qualified allegiance to the State in which they are domiciled. Their persons and property are subject to its laws. The Brig Amy Warwick, (1862) 2 Black (U. S.) 673.

Rights, Privileges, and Immunities Granted or Guaranteed to the Citizen by the United States.

Classification of rights.

These may be classified as follows:

1. Rights granted or guaranteed by the Constitution of the United States as originally framed, or by the first twelve amendments thereto.

2. Rights granted or guaranteed by the XIII, XIV, and XV Amendments.

First, then, the rights, privileges, or immunities granted or guaranteed to the citizen by the Constitution of the United States as originally framed, or by the first twelve amendments thereto, are, in the order of their enumeration, or by necessary implication, as follows:

Election of representatives in Congress.

1. A right. That citizens of the States composing the Union, having the qualifications requisite for electors of the most numerous branch of the State legislature, shall possess the right and privilege of electors for members of the House of Representatives of the United States chosen every second year by the people of the United States. (Art. I, Sec. 2, Cl. 1.)[2]

Eligibility as representatives.

2. A privilege. That such citizens shall be eligible to membership of the House of Representatives, if they possess certain qualifications of age, length

[2] *Ex p.* Yarbrough, (1884) 110 U. S. 651; *In re* Green, (1890) 134 U. S. 377; McPherson *v.* Blacker, (1892) 146 U. S. 1; Wiley *v.* Sinkler, (1900) 179 U. S. 58; Swafford *v.* Templeton, (1902) 185 U. S. 487.

"The right to vote for members of the Congress of the United States is not derived merely from the constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States." Wiley *v.* Sinkler, (1900) 179 U. S. 58, *approving Ex p.* Yarbrough, (1884) 110 U. S. 651.

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of citizenship, and are inhabitants of the State from which they are chosen. (Art. I, Sec. 2, Cl. 2.)

Apportionment of representation and taxation.

3. A right. That representatives and direct taxes shall be apportioned, among the several States, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. This clause is, however, amended, in respect to apportionment of representation, by the XIV Amendment, Sec. 2.[3]

Census.

4. A right. To have an enumeration or census, every ten years, according to law, to determine the basis of representation, but with a proviso that representatives shall not exceed one for every 30,000,

[3] Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Veazie Bank *v.* Fenno, (1869) 8 Wall. (U. S.) 533; Scholey *v.* Rew, (1874) 23 Wall. (U. S.) 331; De Treville *v.* Smalls, (1878) 98 U. S. 517; Gibbons *v.* District of Columbia, (1886) 116 U. S. 404; Pollock *v.* Farmers' L. & T. Co., (1895) 157 U. S. 429; Pollock *v.* Farmers' L. & T. Co., 158 U. S. 601; Thomas *v.* U. S., (1904) 192 U. S. 363. See *infra*, note 9, p. 114.

"The men who framed and adopted that instrument [the Constitution] had just emerged from the struggle for independence, whose rallying cry had been that 'taxation and representation go together.' . . . The States were about, for all national purposes embraced in the Constitution, to become one, united under the same sovereign authority, and governed by the same laws. But as they still retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government or restrained by the Constitution, they were careful to see to it that taxation and representation should go together, so that the sovereignty reserved should not be impaired, and that when Congress, and especially the House of Representatives, where it was specifically provided that all revenue bills must originate, voted a tax upon property, it should be with the consciousness, and under the responsibility, that in so doing the tax so voted would proportionately fall upon the immediate constituents of those who imposed it." Pollock *v.* Farmers' L. & T. Co., (1895) 157 U. S. 429.

but that each State shall have at least one representative. (Art. I, Sec. 2, Cl. 3, Par. 2.)[4]

Eligibility as senators.

5. A privilege. That citizens possessing defined qualifications of age, length of residence, and habitation, shall be eligible as United States senators. (Art. I, Sec. 3, Cl. 3.)

Impeachments.

6. An immunity. Against the trial of impeachments by any other body than the Senate, or conviction without a concurrence of two-thirds of the members present; and against any judgment in such case extending further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. (Art. I, Sec. 3, Cl. 6.)[5]

Privileges of members of Congress.

7. An immunity. From arrest, except for treason, felony, or breach of the peace, while attending Congress as a member or going to or returning from the same; and from being questioned for any speech or debate in either House. (Art. I, Sec. 6, Cl. 1.)[6]

Revenue bills.

8. A right. That all bills for raising revenue shall originate in the House of Representatives. (Art. I, Sec. 7, Cl. 1.)[7]

[4] "The direct and declared object of this census is, to furnish a standard by which 'representatives, and direct taxes, may be apportioned among the several States which may be included within this Union.'" Loughborough *v.* Blake, (1820) 5 Wheat. (U. S.) 317.

[5] "The House of Representatives has the sole right to impeach officers of the government, and the Senate to try them." Kilbourn *v.* Thompson, (1880) 103 U. S. 190.

[6] Anderson *v.* Dunn, (1821) 6 Wheat. (U. S.) 204; Coxe *v.* M'Clenachan, (1798) 3 Dall. (U. S.) 478; Kilbourn *v.* Thompson, (1880) 103 U. S. 168.

[7] Field *v.* Clark, (1892) 143 U. S. 649; Twin City Bank *v.* Nebeker, (1897) 167 U S. 196.

"The construction of this limitation is practically well settled

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Executive sanction of laws.

9. A right. To have the executive sanction of all laws before they become effective, unless they be passed over the President's veto. (Art. I, Sec. 7, Cl. 2.)[8]

Uniformity of duties, etc.

10. A right. That all duties, imposts, and excises imposed by Congress shall be uniform throughout the United States. (Art. I, Sec. 8, Cl. 1.)[9]

by the uniform action of Congress. According to that construction, it 'has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which incidentally create revenue.'" U. S. *v.* Norton, (1875) 1 U. S. 569; Twin City Bank *v.* Nebeker, (1897) 167 U. S. 202.

[8] Field *v.* Clark, (1892) 143 U. S. 649; U. S. *v.* Ballin, (1892) 144 U. S. 1; Twin City Bank *v.* Nebeker, (1897) 167 U. S. 196; La Abra Silver Min. Co. *v.* U. S., (1899) 175 U. S. 423; Wilkes County *v.* Coler, (1901) 180 U. S. 506; Fourteen Diamond Rings *v.* U. S., (1901) 183 U. S. 176.

"The purpose of the Constitution is to secure to the people of this country the best legislation by the simplest means. Its framers being mindful of the errors and oversights which are bred in the heat and strife and divided responsibility of legislative assemblies, and which they had repeatedly beheld in State legislatures, determined to secure to the people the benefits of revision, and to unite with the power of revision the check of undivided responsibility, and to place the power in the hands of the person in whom the nation reposed, for the time being, the most confidence." U. S. *v.* Weil, (1894) 29 Ct. Cl. 540.

[9] Hylton *v.* U. S., (1796) 3 Dall. (U. S.) 171; M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 316; Loughborough *v.* Blake, (1820) 5 Wheat. (U. S.) 317; Osborn *v.* U. S. Bank, (1824) 9 Wheat. (U. S.) 738; Weston *v.* Charleston, (1829) 2 Pet. (U. S.) 449; Dobbins *v.* Erie County, (1842) 16 Pet. (U. S.) 435; Thurlow *v.* Massachusetts, (1847) 5 How. (U. S.) 504; Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; McGuire *v.* Massachusetts, (1865) 3 Wall. (U. S.) 387; Van Allen *v.* Assessors, (1865) 3 Wall. (U. S.) 573; Bradley *v.* People, (1866) 4 Wall. (U. S.) 459; License Tax Cases, (1866) 5 Wall. (U. S.) 462; Pervear *v.* Massachusetts, (1866) 5 Wall. (U. S.) 475; Woodruff *v.* Parham, (1868) 8 Wall. (U. S.) 123; Hinson *v.* Lott, (1868) 8 Wall. (U. S.) 148; Veazie Bank *v.* Fenno, (1869) 8 Wall. (U. S.) 533; Collector *v.* Day, (1870) 11 Wall. (U. S.) 113; U. S. *v.* Singer, (1872) 15 Wall. (U. S.) 111; State Tax on Foreign-held Bonds, (1872) 15 Wall. (U. S.) 300; U. S. *v.* Baltimore, etc., R. Co., (1872) 17 Wall.

11. An immunity. From any laws passed by any State, or other authority than Congress, regulating commerce with foreign nations and among the several States, and with the Indian tribes. (Art. I, Sec. 8, Cl. 3.)[1]

(U. S.) 322; Union Pac. R. Co. *v.* Peniston, (1873) 18 Wall. (U. S.) 5; Scholey *v.* Rew, (1874) 23 Wall. (U. S.) 331; Merchants' Nat. Bank *v.* U. S., (1879) 101 U. S. 1; Springer *v.* U. S., (1881) 102 U. S. 586; Legal Tender Case, (1884) 110 U. S. 421; Head Money Cases, (1884) 112 U. S. 580; Van Brocklin *v.* Tennessee, (1886) 117 U. S. 151; Field *v.* Clark, (1892) 143 U. S. 649, New York, etc., R. Co. *v.* Pennsylvania, (1894) 153 U. S. 628; Pollock *v.* Farmers' L. & T. Co., (1895) 157 U. S. 429; U. S. *v.* Realty Co., (1896) 163 U. S. 427; *In re* Kollock, (1897) 165 U. S. 526; Nicol *v.* Ames, (1899) 173 U. S. 509; Knowlton *v.* Moore, (1900) 178 U. S. 41; De Lima *v.* Bidwell, (1901) 182 U. S. 1; Dooley *v.* U. S., (1901) 182 U. S. 222; Fourteen Diamond Rings *v.* U. S., (1901) 183 U. S. 176; Felsenheld *v.* U. S., (1902) 186 U. S. 126; Thomas *v.* U. S., (1904) 192 U. S. 363. See *supra*, note 3, p. 112.

[1] Gibbons *v.* Ogden, (1824) 9 Wheat. (U. S.) 1; Brown *v.* Maryland, (1827) 12 Wheat. (U. S.) 419; Willson *v.* Black Bird Creek Marsh Co., (1829) 2 Pet. (U. S.) 245; Worcester *v.* Georgia, (1832) 6 Pet. (U. S.) 515; New York *v.* Miln, (1837) 11 Pet. (U. S.) 102; U. S. *v.* Coombs, (1838) 12 Pet. (U. S.) 72; Holmes *v.* Jennison, (1840) 14 Pet. (U. S.) 540; Thurlow *v.* Massachusetts, (1847) 5 How. (U. S.) 504; Smith *v.* Turner, (1849) 7 How. (U. S.) 283; Nathan *v.* Louisiana, (1850) 8 How. (U. S.) 73; Mager *v.* Grima, (1850) 8 How. (U. S.) 490; U. S. *v.* Marigold, (1850) 9 How. (U. S.) 560; Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; The Propeller Genesee Chief *v.* Fitzhugh, (1851) 12 How. (U. S.) 443; Pennsylvania *v.* Wheeling, etc., Bridge Co., (1851) 13 How. (U. S.) 518; Veazie *v.* Moor, (1852) 14 How. (U. S.) 568; Smith *v.* Maryland, (1855) 18 How. (U. S.) 71; Pennsylvania *v.* Wheeling, etc., Bridge Co., (1855) 18 How. (U. S.) 421; Sinnot *v.* Davenport, (1859) 22 How. (U. S.) 227; Foster *v.* Davenport, (1859) 22 How. (U. S.) 244; Conway *v.* Taylor, (1861) 1 Black (U. S.) 603; U. S. *v.* Holliday, (1865) 3 Wall. (U. S.) 407; Gilman *v.* Philadelphia, (1865) 3 Wall. (U. S.) 713; The Passaic Bridges, 3 Wall. (U. S.) 782; Southern Steamship Co. *v.* Port Wardens, (1867) 6 Wall. (U. S.) 31; Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 35; White's Bank *v.* Smith, (1868) 7 Wall. (U. S.) 646; Waring *v.* Mobile, (1868) 8 Wall. (U. S.) 110; Paul *v.* Virginia, (1868) 8 Wall. (U. S.) 168; Thomson *v.* Pacific R. Co., (1869) 9 Wall. (U.

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S.) 579; Downham *v.* Alexandria, (1869) 10 Wall. (U. S.) 173; Clinton Bridge, (1870) 10 Wall. (U. S.) 454; The Daniel Ball, (1870) 10 Wall. (U. S.) 557; Liverpool Ins. Co. *v.* Massachusetts, (1870) 10 Wall. (U. S.) 566; The Montello, (1870) 11 Wall. (U. S.) 411; *Ex p.* McNiel, (1871) 13 Wall. (U. S.) 236; State Freight Tax Case, (1872) 15 Wall. (U. S.) 232; State Tax on Railway Gross Receipts, (1872) 15 Wall. (U. S.) 284; Osborne *v.* Mobile, (1872) 16 Wall. (U. S.) 479; Chicago, etc., R. Co. *v.* Fuller, (1873) 17 Wall. (U. S.) 560; Bartemeyer *v.* Iowa, (1873) 18 Wall. (U. S.) 129; Delaware Railroad Tax, (1873) 18 Wall. (U. S.) 206; Peete *v.* Morgan, (1873) 19 Wall. (U. S.) 581; Dubuque, etc., R. Co. *v.* Richmond, (1873) 19 Wall. (U. S.) 584; Baltimore, etc., R. Co. *v.* Maryland, (1874) 21 Wall. (U. S.) 456; The Lottawanna, (1874) 21 Wall. (U. S.) 558; Welton *v.* Missouri, (1875) 91 U. S. 275; Henderson *v.* New York, (1875) 92 U. S. 259; Chy Lung *v.* Freeman, (1875) 92 U. S. 275; South Carolina *v.* Georgia, (1876) 93 U. S. 4; Sherlock *v.* Alling, (1876) 93 U. S. 99; U. S. *v.* 43 Gallons Whisky, (1876) 93 U. S. 188; Foster *v.* New Orleans, (1876) 94 U. S. 246; McCready *v.* Virginia, (1876) 94 U. S. 391; Hannibal, etc., R. Co. *v.* Husen, (1877) 95 U. S. 465; Pound *v.* Turck, (1877) 95 U. S. 459; Hall *v.* De Cuir, (1877) 95 U. S. 485; Pensacola Tel. Co. *v.* Western Union Tel. Co., (1877) 96 U. S. 1; Boston Beer Co. *v.* Massachusetts, (1877) 97 U. S. 25; Cook *v.* Pennsylvania, (1878) 97 U. S. 566; Wheeling, etc., Transp. Co. *v.* Wheeling, (1878) 99 U. S. 273; Northwestern Union Packet Co. *v.* St. Louis, (1879) 100 U. S. 423; Guy *v.* Baltimore, (1879) 100 U. S. 434; Kirtland *v.* Hotchkiss, (1879) 100 U. S. 491; Howe Mach. Co. *v.* Gage, (1879) 100 U. S. 676; Trade-mark Cases, (1879) 100 U. S. 82; Wilson *v.* McNamee, (1881) 102 U. S. 572; Tiernan *v.* Rinker, (1880) 102 U. S. 123; Lord *v.* Goodall, etc., Steamship Co., (1881) 102 U. S. 541; Mobile County *v.* Kimball, (1881) 102 U. S. 691; Western Union Tel. Co. *v.* Texas, (1881) 105 U. S. 460; Newport, etc., Bridge Co. *v.* U. S., (1881) 105 U. S. 470; Wiggins Ferry Co. *v.* East St. Louis, (1882) 107 U. S. 365; Turner *v.* Maryland, (1882) 107 U. S. 38; Escanaba, etc., Transp. Co. *v.* Chicago, (1882) 107 U. S. 678; Miller *v.* New York, (1883) 109 U. S. 385; Moran *v.* New Orleans, (1884) 112 U. S. 69; Foster *v.* Kansas, (1884) 112 U. S. 201; Head Money Cases, (1884) 112 U. S. 580; Cardwell *v.* American Bridge Co., (1885) 113 U. S. 205; Cooper Mfg. Co. *v.* Ferguson, (1885) 113 U. S. 727; Gloucester Ferry Co. *v.* Pennsylvania, (1885) 114 U. S. 196; Brown *v.* Houston, (1885) 114 U. S. 622; Railroad Commission Cases, (1886) 116 U. S. 307, 347, 352; Walling *v.* Michigan, (1886) 116 U. S. 446; Coe *v.* Errol, (1886) 116 U. S. 517; Pickard *v.* Pullman Southern Car Co., (1886) 117 U. S. 34; Tennessee *v.* Pullman Southern Car Co., (1886) 117 U. S. 51; Morgan's Steam-

ship Co. *v.* Louisiana Board of Health, (1886) 118 U. S. 455; Wabash, etc., R. Co. *v.* Illinois, (1886) 118 U. S. 557; U. S. *v.* Kagama, (1886) 118 U. S. 375; Philadelphia Fire Assoc. *v.* New York, (1886) 119 U. S. 110; Johnson *v.* Chicago, etc., Elevator Co., (1886) 119 U. S. 388; Robbins *v.* Shelby County Taxing Dist., (1887) 120 U. S. 489; Corson *v.* Maryland, (1887) 120 U. S. 502; Fargo *v.* Michigan, (1887) 121 U. S. 230; Philadelphia, etc., Steamship Co., *v.* Pennsylvania, (1887) 122 U. S. 326; Western Union Tel. Co. *v.* Pendleton, (1887) 122 U. S. 347; Sands *v.* Manistee River Imp. Co., (1887) 123 U. S. 288; Smith *v.* Alabama, (1888) 124 U. S. 465; Willamette Iron Bridge Co. *v.* Hatch, (1888) 125 U. S. 1; Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 181; Bowman *v.* Chicago, etc., R. Co. (1888) 125 U. S. 465; Western Union Tel. Co. *v.* Atty.-Gen., (1888) 125 U. S. 530; California *v.* Central Pac. R. Co., (1888) 127 U. S. 1; Ratterman *v.* Western Union Tel. Co., (1888) 127 U. S. 411; Leloup *v.* Mobile, (1888) 127 U. S. 640; Kidd *v.* Pearson, (1888) 128 U. S. 1; Asher *v.* Texas, (1888) 128 U. S. 129; Nashville, etc., R. Co. *v.* Alabama, (1888) 128 U. S. 96; Stoutenburgh *v.* Hennick, (1889) 129 U. S. 141; Kimmish *v.* Ball, (1889) 129 U. S. 217; Western Union Tel. Co. *v.* Alabama State Board of Assessment, (1889) 132 U. S. 472; Fritts *v.* Palmer, (1889) 132 U. S. 282; Louisville, etc., R. Co. *v.* Mississippi, (1890) 133 U. S. 587; Leisy *v.* Hardin, (1890) 135 U. S. 100; Cherokee Nation *v.* Southern Kansas R. Co., (1890) 135 U. S. 641; McCall *v.* California, (1890) 136 U. S. 104; Norfolk, etc., R. Co. *v.* Pennsylvania, (1890) 136 U. S. 114; Minnesota *v.* Barber, (1890) 136 U. S. 318; Texas, etc., R. Co. *v.* Southern Pac. Co., (1890) 137 U. S. 48; Brimmer *v.* Rebman, (1891) 138 U. S. 78; Manchester *v.* Massachusetts, (1891) 139 U. S. 240; *In re* Rahrer, (1891) 140 U. S. 545; Pullman's Palace Car Co. *v.* Pennsylvania, (1891) 141 U. S. 18; Massachusetts *v.* Western Union Tel. Co., (1891) 141 U. S. 40; Crutcher *v.* Kentucky, (1891) 141 U. S. 47; Voight *v.* Wright, (1891) 141 U. S. 62; Henderson Bridge Co. *v.* Henderson, (1891) 141 U. S. 679; *In re* Garnett, (1891) 141 U. S. 1; Maine *v.* Grand Trunk R. Co., (1891) 142 U. S. 217; Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 651; Pacific Express Co. *v.* Seibert, (1892) 142 U. S. 339; Horn Silver Min. Co. *v.* New York, (1892) 143 U. S. 305; Field *v.* Clark, (1892) 143 U. S. 649; O'Neil *v.* Vermont, (1892) 144 U. S. 323; Ficklen *v.* Shelby County Taxing Dist., (1892) 145 U. S. 1; Lehigh Valley R. Co. *v.* Pennsylvania, (1892) 145 U. S. 192; Harman *v.* Chicago, (1893) 147 U. S. 396; Monongahela Nav. Co. *v.* U. S., (1893) 148 U. S. 312; Brennan *v.* Titusville, (1894) 153 U. S. 289; Brass *v.* North Dakota, (1894) 153 U. S. 391; Ashley *v.* Ryan, (1894) 153 U. S. 436; Luxton *v.* North River Bridge Co., (1894) 153 U. S. 525; Postal Tel.-Cable Co. *v.* Charleston, (1894) 153 U. S. 692; Cov-

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ington, etc., Bridge Co. *v.* Kentucky, (1894) 154 U. S. 204; Interstate Commerce Commission *v.* Brimson, (1894) 154 U. S. 447; Plumley *v.* Massachusetts, (1894) 155 U. S. 461; Texas, etc., R. Co. *v.* Interstate Transp. Co., (1895) 155 U. S. 585; Hooper *v.* California, (1895) 155 U. S. 648; Postal Tel.-Cable Co. *v.* Adams, (1895) 155 U. S. 688; U. S. *v.* E. C. Knight Co., (1895) 156 U. S. 1; Emert *v.* Missouri, (1895) 156 U. S. 296; Pittsburg, etc., Coal Co. *v.* Bates, (1895) 156 U. S. 577; Pittsburg, etc., Coal Co. *v.* Louisiana, (1895) 156 U. S. 590; Gulf, etc., R. Co. *v.* Hefley, (1895) 158 U. S. 98; New York, etc., R. Co. *v.* Pennsylvania, (1895) 158 U. S. 431; *In re* Debs, (1895) 158 U. S. 564; Greer *v.* Connecticut, (1896) 161 U. S. 519; Western Union Tel. Co. *v.* James, (1896) 162 U. S. 650; Western Union Tel. Co. *v.* Taggart, (1896) 163 U. S. 1; Illinois Cent. R. Co. *v.* Illinois, (1896) 163 U. S. 142; Hennington *v.* Georgia, (1896) 163 U. S. 299; Osborne *v.* Florida, (1897) 164 U. S. 650; Scott *v.* Donald, (1897) 165 U. S. 58; Adams Express Co. *v.* Ohio State Auditor, (1897) 165 U. S. 194; Lake Shore, etc., R. Co. *v.* Ohio, (1897) 165 U. S. 365; New York, etc., R. Co. *v.* New York, (1897) 165 U. S. 628; Gladson *v.* Minnesota, (1897) 166 U. S. 427; Henderson Bridge Co. *v.* Kentucky, (1897) 166 U. S. 150; St. Anthony Falls Water Power Co. *v.* St. Paul Water Com'rs, (1897) 168 U. S. 349; Chicago, etc., R. Co. *v.* Solan, (1898) 169 U. S. 133; Missouri, etc., R. Co. *v.* Haber, (1898) 169 U. S. 613; Richmond, etc., R. Co. *v.* R. A. Patterson Tobacco Co., (1898) 169 U. S. 311; Rhodes *v.* Iowa, (1898) 170 U. S. 412; Vance *v.* W. A. Vandercook Co., (1898) 170 U. S. 438; Schollenberger *v.* Pennsylvania, (1898) 171 U. S. 1; Collins *v.* New Hampshire, (1898) 171 U. S. 30; Patapsco Guano Co. *v.* North Carolina Board of Agriculture, (1898) 171 U. S. 345; New York *v.* Roberts, (1898) 171 U. S. 658; Hopkins *v.* U. S., (1898) 171 U. S. 578; Anderson *v.* U. S., (1898) 171 U. S. 604; Green Bay, etc., Canal Co. *v.* Patten Paper Co., (1898) 172 U. S. 58; Lake Shore, etc., R. Co. *v.* Ohio, (1899) 173 U. S. 285; Henderson Bridge Co. *v.* Henderson, (1899) 173 U. S. 592; Missouri, etc., R. Co. *v.* McCann, (1899) 174 U. S. 580; Addyston Pipe, etc., Co. *v.* U. S., (1899) 175 U. S. 211; Louisiana *v.* Texas, (1900) 176 U. S. 1; U. S. *v.* Bellingham Bay Boom Co., (1900) 176 U. S. 211; Lindsay, etc., Co. *v.* Mullen, (1900) 176 U. S. 126; Waters-Pierce Oil Co. *v.* Texas, (1900) 177 U. S. 28; New York L. Ins. Co. *v.* Cravens, (1900) 178 U. S. 389; Scranton *v.* Wheeler, (1900) 179 U. S. 141; Williams *v.* Fears, (1900) 179 U. S. 270; Wisconsin, etc., R. Co. *v.* Jacobson, (1900) 179 U. S. 287; Chesapeake, etc., R. Co. *v.* Kentucky, (1900) 179 U. S. 388; Reymann Brewing Co. *v.* Brister, (1900) 179 U. S. 445; W. W. Cargill Co. *v.* Minnesota, (1901) 180 U. S. 452; Rasmussen *v.* Idaho, (1901) 181 U. S. 198; Smith *v.* St. Louis, etc., R. Co., (1901) 181 U. S. 248; Capital

12. A right. To uniform Federal laws of naturalization and bankruptcy throughout the United States. (Art. I, Sec. 8, Cl. 4.)[2]

City Dairy Co. *v.* Ohio, (1902) 183 U. S. 238; Louisville, etc., R. Co. *v.* Kentucky, (1902) 183 U. S. 503; Nutting *v.* Massachusetts, (1902) 183 U. S. 553; McChord *v.* Louisville, etc., R. Co., (1902) 183 U. S. 483; Louisville, etc., R. Co. *v.* Eubank, (1902) 184 U. S. 27; Stockard *v.* Morgan, (1902) 185 U. S. 27; Minneapolis, etc., R. Co. *v.* Minnesota, (1902) 186 U. S. 257; Reid *v.* Colorado, (1902) 187 U. S. 137; Western Union Tel. Co. *v.* New Hope, (1903) 187 U. S. 419; Diamond Glue Co. *v.* U. S. Glue Co., (1903) 187 U. S. 611; Louisville, etc., Ferry Co. *v.* Kentucky, (1903) 188 U. S. 385; U. S. *v.* Lynah, (1903) 188 U. S. 445; Cummings *v.* Chicago, (1903) 188 U. S. 410; The Roanoke, (1903) 189 U. S. 185; Montgomery *v.* Portland, (1903) 190 U. S. 89; Patterson *v.* Bark Eudora, (1903) 190 U. S. 169; Allen *v.* Pullman's Palace Car Co., (1903) 191 U. S. 171; New York *v.* Knight, (1904) 192 U. S. 21; Postal Tel.-Cable Co. *v.* Taylor, (1904) 192 U. S. 64; Crossman *v.* Lurman, (1904) 192 U. S. 189; St. Clair County *v.* Interstate Sand, etc., Co., (1904) 192 U. S. 454; Buttfield *v.* Stranahan, (1904) 192 U. S. 470; American Steel, etc., Co. *v.* Speed, (1904) 192 U. S. 500; Northern Securities Co. *v.* U. S., (1904) 193 U. S. 197.

[2] Sturges *v.* Crowninshield, (1819) 4 Wheat. (U. S.) 122; M'Millan *v.* M'Neill, (1819) 4 Wheat. (U. S.) 209; Farmers' etc., Bank *v.* Smith, (1821) 6 Wheat. (U. S.) 131; Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 213; Boyle *v.* Zacharie, (1832) 6 Pet. (U. S.) 348; Gassies *v.* Ballon, (1832) 6 Pet. (U. S.) 761; Beers *v.* Haughton, (1835) 9 Pet. (U. S.) 329; Suydam *v.* Broadnax, (1840) 14 Pet. (U. S.) 67; Cook *v.* Moffat, (1847) 5 How. (U. S.) 295; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 651; Hanover Nat. Bank *v.* Moyses, (1902) 186 U. S. 181.

The power of Congress to pass bankrupt laws is not exclusive, but that power may be exercised by the States except when it is actually exercised by Congress and the State laws conflict with the Federal law. It is not the mere existence of the power to enact such laws, but its exercise by Congress, which is incompatible with the exercise of the same power by the State. Otherwise with the power to pass uniform Federal laws of naturalization. "The citizens of any one State being entitled by the Constitution to enjoy the rights of citizenship in every other State, that fact creates an interest in this particular in each other's acts, which does not exist with regard to their bankrupt laws; since State acts of natu-

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Coinage, weights and measures, postal system.

13. A right. To a Federal coinage and standard of weights and measures. (Art. I, Sec. 8, Cl. 5.)[3]

14. A right. To an established Federal postal system and post roads. (Art. I, Sec. 8, Cl. 6.)[4]

ralization would thus be extra-territorial in their operation, and have an influence on the most vital interests of other States. On these grounds, State laws of naturalization may be brought under one of the four heads or classes of powers precluded to the States, to wit, that of incompatibility." Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 277. See also Peirce *v.* New Hampshire, (1847) 5 How. (U. S.) 585; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 405; Gilman *v.* Lockwood, (1866) 4 Wall. (U. S.) 410; Brown *v.* Smart, (1892) 145 U. S. 457.

[3] Briscoe *v.* Kentucky Com. Bank, (1837) 11 Pet. (U. S.) 267; Fox *v.* Ohio, (1847) 5 How. (U. S.) 410; U. S. *v.* Marigold, (1850) 9 How. (U. S.) 560; Legal Tender Cases, (1870) 12 Wall. (U. S.) 545; The Miantinomi, (1855) 3 Wall. Jr. (C. C.) 46, 17 Fed. Cas. No. 9,521.

"The Constitution was intended to frame a government as distinguished from a league or compact, a government supreme in some particulars over States and people. It was designed to provide the same currency, having a uniform legal value in all the States. It was for this reason the power to coin money and regulate its value was conferred upon the Federal government, while the same power as well as the power to emit bills of credit was withdrawn from the States. The States can no longer declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in Congress." Legal Tender Cases, (1870) 12 Wall. (U. S.) 545.

[4] Pennsylvania *v.* Wheeling, etc., Bridge Co., (1855) 18 How. (U. S.) 421; Pensacola Tel. Co. *v.* Western Union Tel. Co., (1877) 96 U. S. 1; *Ex p.* Jackson, (1877) 96 U. S. 727; *In re* Rapier, (1892) 143 U. S. 110; Horner *v.* U. S., (1892) 143 U. S. 207; *In re* Debs, (1895) 158 U. S. 564; Illinois Cent. R. R. Co. *v.* Illinois, (1896) 163 U. S. 142; Gladson *v.* Minnesota, (1897) 166 U. S. 427.

"Post-offices and post-roads are established to facilitate the transmission of intelligence. Both commerce and the postal service are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the national government. . . . As they were intrusted to the general government for the good of the nation, it is not only the right,

15. A right. To a Federal system of patent-rights and copyrights. (Art. I, Sec. 8, Cl. 8.)[5]

16. A right. To a supreme court and a system of federal courts inferior to the supreme court. (Art. III, Secs. 1 and 2; Art. I, Sec. 8, Cl. 9.)[6]

17. A right. To Federal protection against piracies and felonies committed on the high seas and

but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation." Pensacola Tel. Co. *v.* Western Union Tel. Co., (1877) 96 U. S. 1.

"The States before the Union was formed could establish post-offices and post-roads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post-offices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective." *In re* Rapier, (1892) 143 U. S. 134.

[5] Grant *v.* Raymond, (1832) 6 Pet. (U. S.) 218; Wheaton *v.* Peters, (1834) 8 Pet. (U. S.) 591; Trade-Mark Cases, (1879) 100 U. S. 82; Burrow-Giles Lith. Co. *v.* Sarony, (1884) 111 U. S. 53; U. S. *v.* Duell, (1899) 172 U. S. 576.

"No State can limit, control, or even exercise the power.' Woollen *v.* Banker, (1877) 2 Flipp. (U. S.) 33, 30 Fed. Cas. No 18,030.

[6] Chisholm *v.* Georgia, (1793) 2 Dall. (U. S.) 419; Stuart *v.* Laird, (1803) 1 Cranch (U. S.) 299; U. S. *v.* Peters, (1809) 5 Cranch (U. S.) 115; Cohen *v.* Virginia, (1821) 6 Wheat. (U. S.) 264; Martin *v.* Hunter, (1816) 1 Wheat. (U. S.) 304; Osborn *v.* U. S. Bank, (1824) 9 Wheat. (U. S.) 738; Benner *v.* Porter, (1850) 9 How. (U. S.) 235; U. S. *v.* Ritchie, (1854) 17 How. (U. S.) 525; Murray *v.* Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 272; *Ex p.* Vallandigham, (1863) 1 Wall. (U. S.) 243; Pennoyer *v.* Neff, (1877) 95 U. S. 714; U. S. *v.* Union Pac. R. Co., (1878) 98 U. S. 569; Mitchell *v.* Clark, (1884) 110 U. S. 633; Ames *v.* Kansas, (1884) 111 U. S. 449; *In re* Loney, (1890) 134 U. S. 373; *In re* Green, (1890) 134 U. S. 377; McAllister *v.* U. S., (1891) 141 U. S. 174; Robertson *v.* Baldwin, (1897) 165 U. S. 275; Hanover Nat. Bank *v.* Moyses, (1902) 186 U. S. 181.

It is manifest that the Constitution requires a supreme court

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offenses against the law of nations. (Art. I, Sec. 8, Cl. 10.)[7]

Making war — letters of marque.

18. An immunity. Against any declaration of war or the granting of letters of marque and reprisal except by the United States. (Art. I, Sec. 8, Cl. 4.)[8]

Appropriations for war purposes.

19. An immunity. Against any appropriations for war purposes by Congress, under its power to be established. But Congress is also bound "to create some inferior courts, in which to vest all that jurisdiction which, under the Constitution, is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. They might establish one or more inferior courts; they might parcel out the jurisdiction among such courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be, at all times, vested either in an original or appellate form, in some courts created under its authority." *Per* Story, J., in Martin *v.* Hunter, (1816) 1 Wheat. (U. S.) 331.

[7] U. S. *v.* Palmer, (1818) 3 Wheat. (U. S.) 610; U. S. *v.* Wiltberger, (1820) 5 Wheat. (U. S.) 76; U. S. *v.* Smith, (1820) 5 Wheat. (U. S.) 153; U. S. *v.* Furlong, (1820) 5 Wheat. (U. S.) 184; U. S. *v.* Arjona, (1887) 120 U. S. 479.

The power of the United States to punish an act constituting an offense against the law of nations does not prevent a State from providing for the punishment of the same thing, where the act is an offense against the authority of the State as well as that of the United States. U. S. *v.* Arjona, (1887) 120 U. S. 479.

[8] Brown *v.* U. S., (1814) 8 Cranch (U. S.) 110; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; Mrs. Alexander's Cotton, (1864) 2 Wall. (U. S.) 404; Miller *v.* U. S., (1870) 11 Wall. (U. S.) 268; Tyler *v.* Defrees, (1870) 11 Wall. (U. S.) 331; Stewart *v.* Kahn, (1870) 11 Wall. (U. S.) 493; Hamilton *v.* Dillin, (1874) 21 Wall. (U. S.) 73; Lamar *v.* Browne, (1875) 92 U. S. 187; Mayfield *v.* Richards, (1885) 115 U. S. 137; Chinese Exclusion Case, (1889) 130 U. S. 581; Church of Jesus Christ *v.* U. S., (1890) 136 U. S. 1; Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 651.

"The Federal power has a right to declare and prosecute wars, and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union. If this right is dependent in any sense, however limited, upon the pleasure of a State, the government itself may be overthrown by an obstruction to its exercise." Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 44.

to raise and support armies, for a longer term than two years. (Art. I, Sec. 8, Cl. 12.)[9]

Navy.

20. A right. To the creation and maintenance of a navy by the Federal government. (Art. I, Sec. 8, Cl. 13.)[1]

Use of the militia.

21. A right. To the use of the militia under the call of the Federal government, for executing the laws of the Union, suppressing insurrections, and repelling invasions. (Art. I, Sec. 8, Cl. 15.)[2]

Authority over government territory.

22. A right. To exclusive Federal legislation

[9] Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 35; Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 651.

"The legislature of the United States will be obliged, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter by a formal vote in the face of their constituents. They are not at liberty to vest in the executive department permanent funds for the support of an army, if they were even uncautious enough to be willing to repose in it so improper a confidence." Hamilton, in *The Federalist*, No. XXVI.

"Among the powers assigned to the national government, is the power 'to raise and support armies,' and the power 'to provide for the government and regulation of the land and naval forces.' The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. . . . No interference with the execution of this power of the national government in the formation, organization, and government of its armies by any State officials could be permitted without greatly impairing the efficiency of, if it did not utterly destroy, this branch of the public service." Tarble's Case, (1871) 13 Wall. (U. S.) 408.

[1] U. S. *v.* Bevans, (1818) 3 Wheat. (U. S.) 336; Dynes *v.* Hoover, (1857) 20 How. (U. S.) 65.

"The authority to build and equip vessels of war is, doubtless, implied in the power to 'declare war,' but the same authority is more directly conferred by the power to 'provide and maintain a navy.'" U. S. *v.* Burlington, etc., Ferry Co., (1884) 21 Fed. Rep. 340. See also U. S. *v.* Rhodes, (1866) 1 Abb. (U. S.) 28, 27 Fed. Cas. No. 16,151.

[2] Houston *v.* Moore, (1820) 5 Wheat. (U. S.) 1; Martin *v.* Mott, (1827) 12 Wheat. (U. S.) 19; Luther *v.* Borden, (1849) 7

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by Congress over a territory not exceeding ten miles square as a seat of government, and like authority over all places purchased for forts, magazines, arsenals, and dockyards. (Art. I, Sec. 8, Cl. 17.)[3]

Habeas corpus.

23. A right. To the privilege of the writ of habeas corpus, save when it may be suspended for

How. (U. S.) 1; Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 35; Texas *v.* White, (1868) 7 Wall. (U. S.) 700; Presser *v.* Illinois, (1886) 116 U. S. 252.

"So long as the militia are acting under the military jurisdiction of the State to which they belong, the powers of legislation over them are concurrent in the general and State government. Congress has power to provide for organizing, arming, and disciplining them; and this power being unlimited, except in the two particulars of officering and training them, according to the discipline to be prescribed by Congress, it may be exercised to any extent that may be deemed necessary by Congress. But as State militia, the power of the State governments to legislate on the same subjects, having existed prior to the formation of the Constitution, and not having been prohibited by that instrument, it remains with the States, subordinate nevertheless to the paramount law of the general government, operating upon the same subject." Houston *v.* Moore, (1820) 5 Wheat. (U. S.) 16.

[3] Hepburn *v.* Ellzey, (1804) 2 Cranch (U. S.) 445; Loughborough *v.* Blake, (1820) 5 Wheat. (U. S.) 317; Cohen *v.* Virginia, (1821) 6 Wheat. (U. S.) 264; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; Kendall *v.* U. S., (1838) 12 Pet. (U. S.) 524; U. S. *v.* Dewitt, (1869) 9 Wall. (U. S.) 41; Dunphy *v.* Kleinsmith, (1870) 11 Wall. (U. S.) 610; Willard *v.* Presbury, (1871) 14 Wall. (U. S.) 676; Kohl *v.* U. S., (1875) 91 U. S. 367; Phillips *v.* Payne, (1875) 92 U. S. 130; U. S. *v.* Fox, (1876) 94 U. S. 315; Ft. Leavenworth R. Co. *v.* Lowe, (1885) 114 U. S. 525; Gibbons *v.* District of Columbia, (1886) 116 U. S. 404; Van Brocklin *v.* Tennessee, (1886) 117 U. S. 151; Stoutenburgh *v.* Hennick, (1889) 129 U. S. 141; Geofroy *v.* Riggs, (1890) 133 U. S. 258; Benson *v.* U. S., (1892) 146 U. S. 325; Shoemaker *v.* U. S., (1893) 147 U. S. 282; Chappell *v.* U. S., (1896) 160 U. S. 499; Ohio *v.* Thomas, (1899) 173 U. S. 276; Wight *v.* Davidson, (1901) 181 U. S. 371.

"When the title is acquired by purchase by consent of the legislatures of the States, the Federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places

public safety in time of rebellion or invasion. (Art. I, Sec. 9, Cl. 2.)[4]

24. An immunity. Against any bill of attainder or *ex post facto* law. (Art. I, Sec. 9, Cl. 3.)[5]

Attainder — *ex post facto* laws.

25. An immunity. Against any capitation or

Direct taxes.

as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of Congress." Ft. Leavenworth R. Co. *v.* Lowe, (1885) 114 U. S. 532.

[4] U. S. *v.* Hamilton, (1795) 3 Dall. (U. S.) 17; Hepburn *v.* Ellzey, (1804) 2 Cranch (U. S.) 445; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75; *Ex p.* Kearney, (1822) 7 Wheat. (U. S.) 38; *Ex p.* Watkins, (1830) 3 Pet. (U. S.) 193; *Ex p.* Milburn, (1835) 9 Pet. (U. S.) 704; Holmes *v.* Jennison, (1840) 14 Pet. (U. S.) 540; *Ex p.* Dorr, (1845) 3 How. (U. S.) 103; Luther *v.* Borden, (1849) 7 How. (U. S.) 1; Ableman *v.* Booth, (1858) 21 How. (U. S.) 506; *Ex p.* Vallandigham, (1863) 1 Wall. (U. S.) 243; *Ex p.* Milligan, (1866) 4 Wall. (U. S.) 2; *Ex p.* McCardle, (1868) 7 Wall. (U. S.) 506; *Ex p.* Yerger, (1868) 8 Wall. (U. S.) 85; Tarble's Case, (1871) 13 Wall. (U. S.) 397; *Ex p.* Lange, (1873) 18 Wall. (U. S.) 163; *Ex p.* Parks, (1876) 93 U. S. 18; *Ex p.* Karstendick, (1876) 93 U. S. 396; *Ex p.* Virginia, (1879) 100 U. S. 339; *In re* Neagle, (1890) 135 U. S. 1; *In re* Frederich, (1893) 149 U. S. 70.

"The Constitution also declares that the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. No express power is given to Congress to secure this invaluable right in the non-enumerated cases, or to suspend the writ in cases of rebellion or invasion. And yet it would be difficult to say, since this great writ of liberty is usually provided for by the ordinary functions of legislation, and can be effectually provided for only in this way, that it ought not to be deemed by necessary implication within the scope of the legislative power of Congress." Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 619.

[5] Fletcher *v.* Peck, (1810) 6 Cranch (U. S.) 87; Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 213; Watson *v.* Mercer, (1834) 8 Pet. (U. S.) 88; Carpenter *v.* Pennsylvania, (1854) 17 How. (U. S.) 456; Locke *v.* New Orleans, (1866) 4 Wall. (U. S.) 172; Cummings *v.* Missouri, (1866) 4 Wall. (U. S.) 277; *Ex p.* Garland, (1866) 4 Wall. (U. S.) 333; Drehman *v.* Stifle, (1869) 8 Wall. (U. S.) 595; Klinger *v.* Missouri, (1871) 13 Wall. (U. S.) 257;

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other direct tax except in proportion to the census above provided for. (Art. I, Sec. 9, Cl. 4.)[6]

Export duties.

26. An immunity. Against any tax or duty on articles exported from any State. (Art. I, Sec. 9, Cl. 5.)[7]

State ports.

27. An immunity. Against any preference to the ports of one State over those of another; and against the entrance, clearance, or payment of duties by vessels bound to or from the ports of one State to or from the ports of another State. (Art. I, Sec. 9, Cl. 6.)[8]

Titles of nobility.

28. An immunity. Against the granting of any titles of nobility by the United States. (Art. I, Sec. 9, Cl. 8.)

Treaties, etc., by the States.

29. Immunities. Against any treaty, alliance,

Pierce *v.* Carskadon, (1872) 16 Wall. (U. S.) 234; Hopt *v.* Utah, (1884) 110 U. S. 574; Cook *v.* U. S., (1891) 138 U. S. 157; Neely *v.* Henkel, (1901) 180 U. S. 109; Southwestern Coal Co. *v.* McBride, (1902) 185 U. S. 499.

[6] License Tax Cases, (1866) 5 Wall. (U. S.) 462; Springer *v.* U. S., (1881) 102 U. S. 586; Nicol *v.* Ames, (1899) 173 U. S. 509.

"If Congress sees fit to impose a capitation, or other direct tax, it must be laid in proportion to the census; if Congress determines to impose duties, imposts, and excises, they must be uniform throughout the United States. These are not strictly limitations of power. They are rules prescribing the mode in which it shall be exercised." Veazie Bank *v.* Fenno, (1869) 8 Wall. (U. S.) 541.

[7] Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; Pace *v.* Burgess, (1875) 92 U. S. 372; Turpin *v.* Burgess, (1886) 117 U. S. 504; Pittsburg, etc., Coal Co. *v.* Bates, (1895) 156 U. S. 577; Nicol *v.* Ames, (1899) 173 U. S. 509; Williams *v.* Fears, (1900) 179 U. S. 270; De Lima *v.* Bidwell, (1901) 182 U. S. 1; Dooley *v.* U. S., (1901) 183 U. S. 151; Fourteen Diamond Rings *v.* U. S. (1901) 183 U. S. 176; Cornell *v.* Coyne, (1904) 192 U. S. 418.

"The purpose of the restriction is that exportation, all exportation, shall be free from national burden." Fairbank *v.* U. S., (1901) 181 U. S. 292.

[8] Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; Pennsylvania *v.* Wheeling, etc., Bridge Co., (1855) 18 How. (U. S.) 421; Munn *v.* Illinois, (1876) 94 U. S. 113; Northwestern Union

or confederation entered into by any State, and the granting of letters of marque or reprisal by any State,[9] and against the coinage of money or emission of bills of credit by any State and the making of anything but gold and silver coin a tender in payment of debts by any State; and the passage of any bill of attainder or *ex post facto* law, or law impairing the obligation of contracts, or grant of any title of nobility by any State. (Art. I, Sec. 10, Cl. 1.)[1]

Packet Co. *v.* St. Louis, (1879) 100 U. S. 423; Cincinnati, etc., Packet Co. *v.* Catlettsburg, (1881) 105 U. S. 559; Spraigue *v.* Thompson, (1886) 118 U. S. 90; Morgan's Steamship Co. *v.* Louisiana Board of Health, (1886) 118 U. S. 455; Johnson *v.* Chicago, etc., Elevator Co., (1886) 119 U. S. 388.

This clause "is a limitation upon the power of Congress to regulate commerce, for the purpose of producing entire commercial equality within the United States, and also a prohibition upon the States to destroy such equality by any legislation prescribing a condition upon which vessels bound from one State shall enter the ports of another State." *Per* Mr. Justice Wayne, in Norris *v.* Boston, (1849) 7 How. (U. S.) 414. See also Pennsylvania *v.* Wheeling, etc., Bridge Co., (1855) 18 How. (U. S.) 433; Williams *v.* The Lizzie Henderson, (1880) 29 Fed. Cas. No. 17,726a.

"This provision operates only as a limitation of the powers of Congress, and in no respect affects the States in the regulation of their domestic affairs." Munn *v.* Illinois, (1876) 94 U. S. 135.

[9] "A State is forbidden to enter into any treaty, alliance, or confederation. If these compacts are with foreign nations, they interfere with the treaty-making power which is conferred entirely on the general government; if with each other, for political purposes, they can scarcely fail to interfere with the general purpose and intent of the Constitution. To grant letters of marque and reprisal, would lead directly to war; the power of declaring which is expressly given to Congress." *Per* Mr. Chief Justice Marshall, in Barron *v.* Baltimore, (1833) 7 Pet. (U. S.) 249.

[1] Decisions relating to making anything but gold and silver coin a tender in payment of debts. Craig *v.* Missouri, (1830) 4 Pet. (U. S.) 410; Byrne *v.* Missouri, (1834) 8 Pet. (U. S.) 40; Briscoe *v.* Kentucky Com. Bank, (1837) 11 Pet. (U. S.) 257; Darrington *v.* Branch Bank, (1851) 13 How. (U. S.) 12.

Decisions relating to *ex post facto* law. Calder *v.* Bull, (1798) 3 Dall. (U. S.) 386; Watson *v.* Mercer, (1834) 8 Pet. (U. S.) 88;

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Carpenter *v.* Pennsylvania, (1854) 17 How. (U. S.) 456; Locke *v.* New Orleans, (1866) 4 Wall. (U. S.) 172; *Ex p.* Garland, (1866) 4 Wall. (U. S.) 333; Gut *v.* Minnesota, (1869) 9 Wall. (U. S.) 35; Kring *v.* Missouri, (1882) 107 U. S. 221; Jaehne *v.* New York, (1888) 128 U. S. 189; Medley, Petitioner, (1890) 134 U. S. 160; Holden *v.* Minnesota, (1890) 137 U. S. 483; Hawker *v.* New York, (1898) 170 U. S. 189; Thompson *v.* Missouri, (1898) 171 U. S., 380; McDonald *v.* Massachusetts, (1901) 180 U. S. 311; Mallett *v.* North Carolina, (1901) 181 U. S. 589; Reetz *v.* Michigan, (1903) 188 U. S. 505.

Decisions relating to laws impairing the obligation of contracts. Fletcher *v.* Peck, (1810) 6 Cranch (U. S.) 87; New Jersey *v.* Wilson, (1812) 7 Cranch (U. S.) 164; Sturges *v.* Crowninshield, (1819) 4 Wheat. (U. S.) 122; M'Millan *v.* M'Neill, (1819) 4 Wheat. (U. S.) 209; Dartmouth College *v.* Woodward, (1819) 4 Wheat. (U. S.) 518; Owings *v.* Speed, (1820) 5 Wheat. (U. S.) 420; Farmers', etc., Bank *v.* Smith, (1821) 6 Wheat. (U. S.) 131; Green *v.* Biddle, (1823) 8 Wheat. (U. S.) 1; Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 213; Mason *v.* Haile, (1827) 12 Wheat. (U. S.) 370; Satterlee *v.* Matthewson, (1829) 2 Pet. (U. S.) 380; Jackson *v.* Lamphire, (1830) 3 Pet. (U. S.) 280; Providence Bank *v.* Billings, (1830) 4 Pet. (U. S.) 514; Mumma *v.* Potomac Co., (1834) 8 Pet. (U. S.) 281; Beers *v.* Haughton, (1835) 9 Pet. (U. S.) 329; Charles River Bridge *v.* Warren Bridge, (1837) 11 Pet. (U. S.) 420; Armstrong *v.* Treasurer, (1842) 16 Pet. (U. S.) 281; Bronson *v.* Kinzie, (1843) 1 How. (U. S.) 311; McCracken *v.* Hayward, (1844) 2 How. (U. S.) 608; Gordon *v.* Appeal Tax Ct., (1845) 3 How. (U. S.) 133; Maryland *v.* Baltimore, etc., R. Co., (1845) 3 How. (U. S.) 534; Neil *v.* Ohio, (1845) 3 How. (U. S.) 720; Cook *v.* Moffat, (1847) 5 How. (U. S.) 295; Planters' Bank *v.* Sharp, (1848) 6 How. (U. S.) 301; West River Bridge Co. *v.* Dix, (1848) 6 How. (U. S.) 507; Crawford *v.* Branch Bank, (1849) 7 How. (U. S.) 279; Woodruff *v.* Trapnall, (1850) 10 How. (U. S.) 190; Paup *v.* Drew, (1850) 10 How. (U. S.) 218; Baltimore, etc., R. Co. *v.* Nesbit, (1850) 10 How. (U. S.) 395; Butler *v.* Pennsylvania, (1850) 10 How. (U. S.) 402; Richmond, etc., R. Co. *v.* Louisa R. Co., (1851) 13 How. (U. S.) 71; Vincennes University *v.* Indiana, (1852) 14 How. (U. S.) 268; Curran *v.* Arkansas, (1853) 15 How. (U. S.) 304; Piqua Branch of State Bank *v.* Knoop, (1853) 16 How. (U. S.) 369; Dodge *v.* Woolsey, (1855) 18 How. (U. S.) 331; Beers *v.* Arkansas, (1857) 20 How. (U. S.) 527; Aspinwall *v.* Daviess County, (1859) 22 How. (U. S.) 364; Christ Church *v.* Philadelphia County, (1860) 24 How. (U. S.) 300; Howard *v.* Bugbee, (1860) 24 How. (U. S.) 461; Jefferson Branch Bank *v.* Skelly, (1861) 1 Black (U. S.) 436; Franklin Branch Bank *v.* Ohio, (1861) 1 Black (U. S.) 474; Wabash, etc., Canal Co. *v.* Beers,

(1862) 2 Black (U. S.) 448; Gilman *v.* Sheboygan, (1862) 2 Black (U. S.) 510; Passaic River, etc., Bridge *v.* Hoboken Land, etc., Co., (1863) 1 Wall. (U. S.) 116; Hawthorne *v.* Calef, (1864) 2 Wall. (U. S.) 10; Binghamton Bridge, (1865) 3 Wall. (U. S.) 51; Washington, etc., Turnpike Co. *v.* Maryland, (1865) 3 Wall. (U. S.) 210; Missouri, etc., R. Co. *v.* Rock, (1866) 4 Wall. (U. S.) 177; Cummings *v.* Missouri, (1866) 4 Wall. (U. S.) 277; Von Hoffman *v.* Quincy, (1866) 4 Wall. (U. S.) 535; Mulligan *v.* Corbins, (1868) 7 Wall. (U. S.) 487; Furman *v.* Nichol, (1868) 8 Wall. (U. S.) 44; Home of Friendless *v.* Rouse, (1869) 8 Wall. (U. S.) 430; Washington University *v.* Rouse, (1869) 8 Wall. (U. S.) 439; Butz *v.* Muscatine, (1869) 8 Wall. (U. S.) 575; Drehman *v.* Stifle, (1869) 8 Wall. (U. S.) 595; Hepburn *v.* Griswold, (1869) 8 Wall. (U. S.) 603; Ohio, etc., R. Co. *v.* McClure, (1870) 10 Wall. (U. S.) 511; Legal Tender Cases, (1870) 12 Wall. (U. S.) 457; Curtis *v.* Whitney, (1871) 13 Wall. (U. S.) 68; Pennsylvania College Cases, (1871) 13 Wall. (U. S.) 190; Wilmington, etc., R. Co. *v.* Reid, (1871) 13 Wall. (U. S.) 264; East Saginaw Salt Mfg. Co. *v.* East Saginaw, (1871) 13 Wall. (U. S.) 373; White *v.* Hart, (1871) 13 Wall. (U. S.) 646; Osborn *v.* Nicholson, (1871) 13 Wall. (U. S.) 654; Norwich, etc., R. Co. *v.* Johnson, (1872) 15 Wall. (U. S.) 195; State Tax on Foreign-held Bonds, (1872) 15 Wall. (U. S.) 300; Tomlinson *v.* Jessup, (1872) 15 Wall. (U. S.) 454; Tomlinson *v.* Branch, (1872) 15 Wall. (U. S.) 460; Miller *v.* New York, (1872) 15 Wall. (U. S.) 478; Holyoke Water-Power Co. *v.* Lyman, (1872) 15 Wall. (U. S.) 500; Gunn *v.* Barry, (1872) 15 Wall. (U. S.) 610; Humphrey *v.* Pegues, (1872) 16 Wall. (U. S.) 244; Walker *v.* Whitehead, (1872) 16 Wall. (U. S.) 314; Sohn *v.* Waterson, (1873) 17 Wall. (U. S.) 596; Barings *v.* Dabney, (1873) 19 Wall. (U. S.) 1; Head *v.* Missouri University, (1873) 19 Wall. (U. S.) 526; Pacific R. Co. *v.* Maguire, (1873) 20 Wall. (U. S.) 36; Garrison *v.* New York, (1874) 21 Wall. (U. S.) 196; Ochiltree *v.* Iowa R. Contracting Co., (1874) 21 Wall. (U. S.) 249; Wilmington, etc., R. Co. *v.* King, (1875) 91 U. S. 3; Moultrie County *v.* Rockingham Ten-Cent Sav.-Bank, (1875) 92 U. S. 631; Home Ins. Co. *v.* Augusta, (1876) 93 U. S. 116; West Wisconsin R. Co. *v.* Trempealeau County, (1876) 93 U. S. 595; New Jersey *v.* Yard, (1877) 95 U. S. 104; Cairo, etc., R. Co. *v.* Hecht, (1877) 95 U. S. 168; Terry *v.* Anderson, (1877) 95 U. S. 628; Farrington *v.* Tennessee, (1877) 95 U. S. 679; Blount *v.* Windley, (1877) 95 U. S. 173; Murray *v.* Charleston, (1877) 96 U. S. 432; Edwards *v.* Kearzey, (1877) 96 U. S. 595; Tennessee *v.* Sneed, (1877) 96 U. S. 69; Williams *v.* Bruffy, (1877) 96 U. S. 176; Richmond, etc., R. Co. *v.* Richmond, (1877) 96 U. S. 521; Boston Beer Co. *v.* Massachusetts, (1877) 97 U. S. 25; Northwestern Fertilizing Co. *v.* Hyde Park, (1878) 97 U. S. 659; Memphis, etc., R. Co. *v.* Gaines, (1878) 97

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U. S. 697; U. S. *v.* Memphis, (1877) 97 U. S. 284; Keith *v.* Clark, (1878) 97 U. S. 454; Atlantic, etc., R. Co. *v.* Georgia, (1878) 98 U. S. 359; Northwestern University *v.* People, (1878) 99 U. S. 309; Newton *v.* Mahoning County, (1879) 100 U. S. 548; Memphis, etc., R. Co. *v.* Tennessee, (1879) 101 U. S. 337; Wright *v.* Nagle, (1879) 101 U. S. 791; Stone *v.* Mississippi, (1879) 101 U. S. 814; South, etc., Alabama R. Co. *v.* Alabama, (1879) 101 U. S. 832; Louisiana *v.* New Orleans, (1880) 102 U. S. 203; Hall *v.* Wisconsin, (1880) 103 U. S. 5; Penniman's Case, (1880) 103 U. S. 714; Wolff *v.* New Orleans, (1880) 103 U. S. 358; Koshkonong *v.* Burton, (1882) 104 U. S. 668; New Haven, etc., R. Co. *v.* Hamersley, (1881) 104 U. S. 1; Clay County *v.* Savings Soc., (1882) 104 U. S. 579; New York Guaranty, etc., Co. *v.* Board of Liquidation, (1881) 105 U. S. 622; Greenwood *v.* Union Freight R. Co., (1881) 105 U. S. 13; St. Anna's Asylum *v.* New Orleans, (1881) 105 U. S. 362; Louisiana *v.* Pilsbury, (1881) 105 U. S. 278; New Orleans *v.* Morris, (1881) 105 U. S. 600; Close *v.* Glenwood Cemetery, (1882) 107 U. S. 466; Antoni *v.* Greenhow, (1882) 107 U. S. 769; Vance *v.* Vance, (1883) 108 U. S. 514; Memphis Gas Light Co. *v.* Shelby County Taxing Dist., (1883) 109 U. S. 398; Canada Southern R. Co. *v.* Gebhard, (1883) 109 U. S. 527; Louisiana *v.* New Orleans, (1883) 109 U. S. 285; Gilfillan *v.* Union Canal Co., (1883) 109 U. S. 401; Spring Valley Water Works *v.* Schottler, (1884) 110 U. S. 347; Butchers' Union Slaughter-House, etc., Co. *v.* Crescent City Live-Stock Landing, etc., Co., (1884) 111 U. S. 746; Nelson *v.* Police Jury, (1884) 111 U. S. 716; Marye *v.* Parsons, (1884) 114 U. S. 325; Poindexter *v.* Greenhow, (1884) 114 U. S. 270; Amy *v.* Shelby County Taxing Dist., (1885) 114 U. S. 387; Allen *v.* Baltimore, etc., R. Co., (1884) 114 U. S. 311; Effinger *v.* Kenney, (1885) 115 U. S. 566; New Orleans Gas Co. *v.* Louisiana Light Co., (1885) 115 U. S. 650; Louisville Gas Co. *v.* Citizens' Gas Co., (1885) 115 U. S. 683; New Orleans Water-Works Co. *v.* Rivers, (1885) 115 U. S. 674; Fisk *v.* Jefferson Police Jury, (1885) 166 U. S. 131; Mobile *v.* Watson, (1886) 116 U. S. 289; New Orleans *v.* Houston, (1886) 119 U. S. 265; St. Tammany Water-Works *v.* New Orleans Water-Works, (1887) 120 U. S. 64; Church *v.* Kelsey, (1887) 121 U. S. 282; Lehigh Water Co. *v.* Easton, (1887) 121 U. S. 388; Seibert *v.* Lewis, (1887) 122 U. S. 284; New Orleans Water-Works Co. *v.* Louisiana Sugar Refining Co., (1888) 125 U. S. 18; Maynard *v.* Hill, (1888) 125 U. S. 190; Denny *v.* Bennett, (1888) 128 U. S. 489; Williamson *v.* New Jersey, (1889) 130 U. S. 189; Freeland *v.* Williams, (1889) 131 U. S. 405; Campbell *v.* Wade, (1889) 132 U. S. 34; Pennsylvania R. Co. *v.* Miller, (1889) 132 U. S. 75; Pennie *v.* Reis, (1889) 132 U. S. 464; Hans *v.* Louisiana, (1890) 134 U. S. 1; Crenshaw *v.* U. S., (1890) 134 U. S. 99; Chicago, etc., R. Co. *v.* Minnesota, (1890) 134 U. S. 418; Minneapolis Eastern R. Co. *v.* Minnesota, (1890) 134

U. S. 467; Hill *v.* Merchants' Mut. Ins. Co., (1890) 134 U. S. 515; McGahey *v.* Virginia, (1890) 135 U. S. 662; U. S. *v.* North Carolina, (1890) 136 U. S. 211; Wheeler *v.* Jackson, (1890) 137 U. S. 245; Sioux City St. R. Co. *v.* Sioux City, (1891) 138 U. S. 98; Wheeling, etc., Bridge Co. *v.* Wheeling Bridge Co., (1891) 138 U. S. 287; Pennoyer *v.* McConnaughy, (1891) 140 U. S. 1; Scotland County Ct. *v.* U. S., (1891) 140 U. S. 41; Essex Public Road Board *v.* Skinkle, (1891) 140 U. S. 334; Stein *v.* Bienville Water Supply Co., (1891) 141 U. S. 67; New Orleans *v.* New Orleans Water-Works Co., (1891) 142 U. S. 79; New Orleans City, etc., R. Co. *v.* New Orleans, (1892) 143 U. S. 192; Louisville Water Co. *v.* Clark, (1892) 143 U. S. 1; New York *v.* Squire, (1892) 145 U. S. 175; Baker *v.* Kilgore, (1892) 145 U. S. 487; Morley *v.* Lake Shore, etc., R. Co. (1892) 146 U. S. 162; Hamilton Gas Light, etc., Co. *v.* Hamilton, (1892) 146 U. S. 258; Wilmington, etc., R. Co. *v.* Alsbrook, (1892) 146 U. S. 279; Illinois Central R. Co. *v.* Illinois, (1892) 146 U. S. 387; Bier *v.* McGehee, (1893) 148 U. S. 137; People *v.* Cook, (1893) 148 U. S. 397; New York, etc., R. Co. *v.* Bristol, (1894) 151 U. S. 556; Bryan *v.* Board of Education, (1894) 151 U. S. 639; Duncan *v.* Missouri, (1894) 152 U. S. 377; New Orleans *v.* Benjamin, (1894) 153 U. S. 411; Eagle Ins. Co. *v.* Ohio, (1894) 153 U. S. 446; New York, etc., R. Co. *v.* Pennsylvania, (1894) 153 U. S. 628; Mobile, etc., R. Co. *v.* Tennessee, (1894) 153 U. S. 486; U. S. *v.* Thoman, (1895) 156 U. S. 353; St. Louis, etc., R. Co. *v.* Gill, (1895) 156 U. S. 649; New Orleans City, etc., R. Co. *v.* Louisiana, (1895) 157 U. S. 219; Bank of Commerce *v.* Tennessee, (1896) 161 U. S. 134; Baltzer *v.* North Carolina, (1896) 161 U. S. 240; Pearsall *v.* Great Northern R. Co., (1896) 161 U. S. 646; Louisville, etc., R. Co. *v.* Kentucky, (1896) 161 U. S. 677; Woodruff *v.* Mississippi, (1896) 162 U. S. 291; Gibson *v.* Mississippi, (1896) 162 U. S. 565; Barnitz *v.* Beverly, (1896) 163 U. S. 118; Hanford *v.* Davies, (1896) 163 U. S. 273; Covington, etc., Turnpike Road Co. *v.* Sandford, (1896) 164 U. S. 578; St. Louis, etc., R. Co. *v.* Mathews, (1897) 165 U. S. 1; Grand Lodge, etc., *v.* New Orleans, (1897) 166 U. S. 143; Baltimore *v.* Baltimore Trust, etc., Co., (1897) 166 U. S. 673; City R. Co. *v.* Citizens' St. R. Co., (1897) 166 U. S. 557; Wabash R. Co. *v.* Defiance, (1897) 167 U. S. 88; Shapleigh *v.* San Angelo, (1897) 167 U. S. 646; St. Anthony Falls Water Power Co. *v.* St. Paul Water Com'rs, (1897) 168 U. S. 349; Douglas *v.* Kentucky, (1897) 168 U. S. 488; Galveston, etc., R. Co. *v.* Texas, (1898) 170 U. S. 226; Houston, etc., R. Co. *v.* Texas, (1898) 170 U. S. 243; Williams *v.* Eggleston, (1898) 170 U. S. 304; Chicago, etc., R. Co. *v.* Nebraska, (1898) 170 U. S. 57; Missouri *v.* Murphy, (1898) 170 U. S. 78; Louisville Water Co. *v.* Kentucky, (1898) 170 U. S. 127; Walla Walla *v.* Walla Walla Water Co., (1898) 172 U. S. 1; McCullough *v.* Virginia, (1898) 172 U. S.

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Imposts, etc., by the States.

30. An immunity. From the laying of any impost or duties on imports or exports by any State, without the consent of Congress. (Art. I, Sec. 10, Cl. 2.)[2]

102; Connecticut Mut. L. Ins. Co. *v.* Spratley, (1899) 172 U. S. 602; Citizens' Sav. Bank *v.* Owensboro, (1899) 173 U. S. 636; Lake Shore, etc., R. Co. *v.* Smith, (1899) 173 U. S. 684; Covington *v.* Kentucky, (1899) 173 U. S. 231; Henderson Bridge Co. *v.* Henderson, (1899) 173 U. S. 592; Walsh *v.* Columbus, etc., R. Co., (1900) 176 U. S. 469; Adirondack R. Co. *v.* New York, (1900) 176 U. S. 335; New York L. Ins. Co. *v.* Cravens, (1900) 178 U. S. 389; Looker *v.* Maynard, (1900) 179 U. S. 46; Stearns *v.* Minnesota, (1900) 179 U. S. 223; Illinois Cent. R. Co. *v.* Adams, (1901) 180 U. S. 28; St. Paul Gas Light Co. *v.* St. Paul, (1901) 181 U. S. 142; Red River Valley Nat. Bank *v.* Craig, (1901) 181 U. S. 548; Bedford *v.* Eastern Bldg., etc., Assoc., (1901) 181 U. S. 227; Knoxville Iron Co. *v.* Harbison, (1901) 183 U. S. 13; Orr *v.* Gilman, (1902) 183 U. S. 278; Wilson *v.* Iseminger, (1902) 185 U. S. 55; Vicksburg Water-Works Co. *v.* Vicksburg, (1902) 185 U. S. 65; Hanover Nat. Bank *v.* Moyses, (1902) 186 U. S. 181; Northern Cent. R. Co. *v.* Maryland, (1902) 187 U. S. 258; Oshkosh Waterworks Co. *v.* Oshkosh, (1903) 187 U. S. 437; Diamond Glue Co. *v.* U. S. Glue Co., (1903) 187 U. S. 611; Weber *v.* Rogan, (1903) 188 U. S. 10; Blackstone *v.* Miller, (1903) 188 U. S. 189; Waggoner *v.* Flack, (1903) 188 U. S. 595; Owensboro *v.* Owensboro Waterworks Co., (1903) 191 U. S. 358; Wisconsin, etc., R. Co. *v.* Powers, (1903) 191 U. S. 379; Deposit Bank *v.* Frankfort, (1903) 191 U. S. 499; Citizens' Bank *v.* Parker, (1904) 192 U. S. 73; Stanislaus County *v.* San Joaquin, etc., Canal, etc., Co., (1904) 192 U. S. 201.

[2] McCulloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 316; Gibbons *v.* Ogden, (1824) 9 Wheat. (U. S.) 1; Brown *v.* Maryland, (1827) 12 Wheat. (U. S.) 419; Mager *v.* Grima, (1850) 8 How. (U. S.) 490; Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; Almy *v.* California, (1860) 24 How. (U. S.) 169; License Tax Cases, (1866) 5 Wall. (U. S.) 462; Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 35; Waring *v.* Mobile, (1868) 8 Wall. (U. S.) 110; Woodruff *v.* Parham, (1868) 8 Wall. (U. S.) 123; Hinson *v.* Lott, (1868) 8 Wall. (U. S.) 148; State Tonnage Tax Cases, (1870) 12 Wall. (U. S.) 204; State Tax on Railway Gross Receipts, (1872) 15 Wall. (U. S.) 284; Inman Steamship Co. *v.* Tinker, (1876) 94 U. S. 238; Cook *v.* Pennsylvania, (1878) 97 U. S. 566; Keokuk Northern Line Packet Co. *v.* Keokuk, (1877) 95 U. S. 80; People *v.* Compagnie Generale Transatlantique, (1882) 107 U. S. 59; Turner *v.* Maryland, (1882) 107 U. S. 38; Brown *v.* Houston, (1885) 114 U. S.

31. Immunities. From any duty of tonnage laid by any State without the consent of Congress, or the keeping of troops or ships of war in time of peace by any State, or the entering into an agreement or compact with another State or a foreign power, or engaging in war unless actually invaded or in such immediate danger as will not admit of delay. (Art. I, Sec. 10, Cl. 3.)[3]

622; Coe *v.* Errol, (1886) 116 U. S. 517; Turpin *v.* Burgess, (1886) 117 U. S. 504; Pittsburg, etc., Coal Co. *v.* Bates, (1895) 156 U. S. 577; Pittsburg, etc., Coal Co. *v.* Louisiana, (1895) 156 U. S. 590; Scott *v.* Donald, (1897) 165 U. S. 58; Patapsco Guano Co. *v.* North Carolina Board of Agriculture, (1898) 171 U. S. 345; May *v.* New Orleans, (1900) 178 U. S. 496; Dooley *v.* U. S., (1901) 183 U. S. 151; Cornell *v.* Coyne, (1904) 192 U. S. 418; American Steel, etc., Co. *v.* Speed, (1904) 192 U. S. 500.

"Prior to the adoption of the Constitution the States attempted to regulate commerce, and they also levied duties on imports and exports and duties of tonnage, and it was the embarrassments growing out of such regulations and conflicting obligations which mainly led to the abandonment of the confederation and to the more perfect union under the present Constitution." State Tonnage Tax Cases, (1870) 12 Wall. (U. S.) 214. See also Brown *v.* Maryland, (1827) 12 Wheat. (U. S.) 439.

[3] Green *v.* Biddle, (1823) 8 Wheat. (U. S.) 1; Poole *v.* Fleeger, (1837) 11 Pet. (U. S.) 185; Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 299; Peete *v.* Morgan, (1873) 19 Wall. (U. S.) 581; Cannon *v.* New Orleans, (1874) 20 Wall. (U. S.) 577; Inman Steamship Co. *v.* Tinker, (1876) 94 U. S. 238; Wheeling, etc., Transp. Co. *v.* Wheeling, (1878) 99 U. S. 273; Northwestern Union Packet Co. *v.* St. Louis, (1879) 100 U. S. 423; Keokuk Northern Line Packet Co. *v.* Keokuk, (1877) 95 U. S. 80; Vicksburg *v.* Tobin, (1879) 100 U. S. 430; Cincinnati, etc., Packet Co. *v.* Catlettsburg, (1881) 105 U. S. 559; Wiggins Ferry Co. *v.* East St. Louis, (1882) 107 U. S. 365; Parkersburg, etc., Transp. Co. *v.* Parkersburg, (1882) 107 U. S. 691; Presser *v.* Illinois, (1886) 116 U. S. 252; U. S. 455; Huse *v.* Glover, (1886) 119 U. S. 543; Ouachita Packet Co. *v.* Aiken, (1887) 121 U. S. 444; Indiana *v.* Kentucky, (1890) 136 U. S. 479; Virginia *v.* Tennessee, (1893) 148 U. S. 503; Wharton *v.* Wise, (1894) 153 U. S. 155; St. Louis, etc., R. Co. *v.* James, (1896) 161 U. S. 545.

"Looking at the clause [in the Federal Constitution] in which

Chapter IV.

Election of President and Vice-president.

32. A privilege. Of being presidential and vice-presidential elector in the manner provided by the legislation of the State. (Art. II, Sec. 1, Cl. 1 and 2.)[4]

Eligibility to the presidency.

33. A privilege. Of being President provided the citizen possesses the requisite qualifications of birth, age, and residence. (Art. II, Sec. 1, Cl. 4.)[5]

Eligibility to the vice-presidency.

34. A privilege. Of being Vice-President subject to the same qualifications as last named. (Art. II, Sec. 1, Cl. 4.)

Suing in the federal courts.

35. A privilege. Of suing in the federal courts, on the terms and subject to the conditions of jurisdiction set forth in the Constitution and laws. (Art. III, Secs. 1 and 2.)

Venue in criminal cases — jury trial.

36. A right. To trial by jury in the State where the crime is charged to have been committed in any trial for crime in a federal court, except in case of impeachment, and when the crime is not committed

the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." Virginia *v.* Tennessee, (1893) 148 U. S. 519.

[4] Field *v.* Clark, (1892) 143 U. S. 649; Chisholm *v.* Georgia, (1793) 2 Dall. (U. S.) 419; Leitensdorfer *v.* Webb, (1857) 20 How. (U. S.) 176; *Ex p.* Siebold, (1879) 100 U. S. 371; *In re* Green, (1890) 134 U. S. 377; McPherson *v.* Blacker, (1892) 146 U. S. 1.

"Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that congressional and federal influence might be excluded." McPherson *v.* Blacker, (1892) 146 U. S. 35.

[5] Inglis *v.* Sailor's Snug Harbour, (1830) 3 Pet. (U. S.) 99.

within any State the trial to be at such place or places as Congress directs. (Art. III, Sec. 2.)[6]

[6] Hayburn's Case, (1792) 2 Dall. (U. S.) 410; Chisholm *v.* Georgia, (1793) 2 Dall. (U. S.) 419; Glass *v.* The Sloop Betsey, (1794) 3 Dall. (U. S.) 6; U. S. *v.* La Vengeance, (1796) 3 Dall. (U. S.) 297; Hollingsworth *v.* Virginia, (1798) 3 Dall. (U. S.) 378; Mossman *v.* Higginson, (1800) 4 Dall. (U. S.) 12; Marbury *v.* Madison, (1803) 1 Cranch (U. S.) 137; Hepburn *v.* Ellzey, (1804) 2 Cranch (U. S.) 445; U. S. *v.* More, (1805) 3 Cranch (U. S.) 159; Strawbridge *v.* Curtiss, (1806) 3 Cranch (U. S.) 267; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75; Rose *v.* Himely, (1808) 4 Cranch (U. S.) 241; Chappedelaine *v.* Dechenaux, (1808) 4 Cranch (U. S.) 306; Hope Ins. Co. *v.* Boardman, (1809) 5 Cranch (U. S.) 57; U. S. Bank *v.* Deveaux, (1809) 5 Cranch (U. S.) 61; Hodgson *v.* Bowerbank, (1809) 5 Cranch (U. S.) 303; Owings *v.* Norwood, (1809) 5 Cranch (U. S.) 344; Durousseau *v.* U. S., (1810) 6 Cranch (U. S.) 307; U. S. *v.* Hudson, (1812) 7 Cranch (U. S.) 32; Martin *v* Hunter, (1816) 1 Wheat. (U. S.) 304; Colson *v.* Lewis, (1817) 2 Wheat. (U. S.) 377; U. S. *v.* Bevans, (1818) 3 Wheat. (U. S.) 336; Cohen *v.* Virginia, (1821) 6 Wheat. (U. S.) 264; *Ex p.* Kearney, (1822) 7 Wheat. (U. S.) 38; Matthews *v.* Zane, (1822) 7 Wheat. (U. S.) 164; Osborn *v.* U. S. Bank, (1824) 9 Wheat. (U. S.) 738; U. S. *v.* Ortega, (1826) 11 Wheat. (U. S.) 467; American Ins. Co. *v.* 356 Bales Cotton, (1828) 1 Pet. (U. S.) 511; Jackson *v.* Twentyman, (1829) 2 Pet. (U. S.) 136; Cherokee Nation *v.* Georgia, (1831) 5 Pet. (U. S.) 1; New Jersey *v.* New York, (1831) 5 Pet. (U. S.) 284; Davis *v.* Packard, (1832) 6 Pet. (U. S.) 41, (1833) 7 Pet. (U. S.) 276; U. S. *v.* Arredondo, (1832) 6 Pet. (U. S.) 691; Breedlove *v.* Nicolet, (1833) 7 Pet. (U. S.) 413; Brown *v.* Keene, (1834) 8 Pet. (U. S.) 112; Davis *v.* Packard, (1834) 8 Pet. (U. S.) 312; New Orleans *v.* De Armas, (1835) 9 Pet. (U. S.) 224; Rhode Island *v.* Massachusetts, (1838) 12 Pet. (U. S.) 657; Augusta Bank *v.* Earle, (1839) 13 Pet. (U. S.) 519; Commercial, etc., Bank *v.* Slocomb, (1840) 14 Pet. (U. S.) 60; Suydam *v.* Broadnax, (1840) 14 Pet. (U. S.) 67; Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 539; Louisville, etc., R. Co. *v.* Letson, (1844) 2 How. (U. S.) 497; Cary *v.* Curtis, (1845) 3 How. (U. S.) 236; Waring *v.* Clarke, (1847) 5 How. (U. S.) 441; Luther *v.* Borden, (1849) 7 How. (U. S.) 1; Sheldon *v.* Sill, (1850) 8 How. (U. S.) 441; The Propeller Genesee Chief *v.* Fitzhugh, (1851) 12 How. (U. S.) 443; Fretz *v.* Bull, (1851) 12 How. (U. S.) 466; Neves *v.* Scott, (1851) 13 How. (U. S.) 268; Pennsylvania *v.* Wheeling, etc., Bridge Co., (1851) 13 How. (U. S.) 518; Marshall *v.* Baltimore, etc., R. Co., (1853) 16 How. (U. S.) 314; U. S. *v.* Guthrie, (1854) 17 How. (U. S.) 284; Smith *v.* Maryland, (1855)

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18 How. (U. S.) 71; Jones *v.* League, (1855) 18 How. (U. S.) 76; Murray *v.* Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 272; Hyde *v.* Stone, (1857) 20 How. (U. S.) 170; Irvine *v.* Marshall, (1857) 20 How. (U. S.) 558; Fenn *v.* Holme, (1858) 21 How. (U. S.) 481; Morewood *v.* Enequist, (1859) 23 How. (U. S.) 491; Kentucky *v.* Dennison, (1860) 24 How. (U. S.) 66; Ohio, etc., R. Co. *v.* Wheeler, (1861) 1 Black (U. S.) 286; The Steamer St. Lawrence, (1861) 1 Black (U. S.) 522; The Propeller Commerce, (1861) 1 Black (U. S.) 574; *Ex p.* Vallandigham, (1863) 1 Wall. (U. S.) 243; *Ex p.* Milligan, (1866) 4 Wall. (U. S.) 2; The Moses Taylor, (1866) 4 Wall. (U. S.) 411; Mississippi *v.* Johnson, (1866) 4 Wall. (U. S.) 475; The Hine *v.* Trevor, (1866) 4 Wall. (U. S.) 555; Philadelphia *v.* Collector, (1866) 5 Wall. (U. S.) 720; Georgia *v.* Stanton, (1867) 6 Wall. (U. S.) 50; Payne *v.* Hook, (1868) 7 Wall. (U. S.) 425; The Alicia, (1868) 7 Wall. (U. S.) 571; *Ex p.* Yerger, (1868) 8 Wall. (U. S.) 85; New England Mut. Marine Ins. Co. *v.* Dunham, (1870) 11 Wall. (U. S.) 1; Virginia *v.* West Virginia, (1870) 11 Wall. (U. S.) 39; Susquehanna, etc., Valley R., etc., Co. *v.* Blatchford, (1870) 11 Wall. (U. S.) 172; Chicago, etc., R. Co. *v.* Whitton, (1871) 13 Wall. (U. S.) 270; Tarble's Case, (1871) 13 Wall. (U. S.) 397; Blyew *v.* U. S., (1871) 13 Wall. (U. S.) 581; Davis *v.* Gray, (1872) 16 Wall. (U. S.) 203; Sewing Mach. Co.'s Case, (1873) 18 Wall. (U. S.) 553; Home Ins. Co. *v.* Morse, (1874) 20 Wall. (U. S.) 445; Vannevar *v.* Bryant, (1874) 21 Wall. (U. S.) 41; The Lottawanna, (1874) 21 Wall. (U. S.) 558; Gaines *v.* Fuentes, (1875) 92 U. S. 10; Claflin *v.* Houseman, (1876) 93 U. S. 130; Muller *v.* Dows, (1876) 94 U. S. 444; Doyle *v.* Continental Ins. Co., (1876) 94 U. S. 535; U. S. *v.* Union Pac. R. Co., (1878) 98 U. S. 569; Tennessee *v.* Davis, (1879) 100 U. S. 257; *Ex p.* Boyd, (1881) 105 U. S. 647; Bush *v.* Kentucky, (1882) 107 U. S. 110; Parkersburg, etc., Transp. Co. *v.* Parkersburg, (1882) 107 U. S. 691; Gross *v.* U. S. Mortgage Co., (1883) 108 U. S. 477; Chicago, etc., R. Co. *v.* Wiggins Ferry Co., (1883) 108 U. S. 18; Louisiana *v.* New Orleans, (1883) 108 U. S. 568; Ellis *v.* Davis, (1883) 109 U. S. 485; Carroll County *v.* Smith, (1884) 111 U. S. 556; Southern Pac. R. Co. *v.* California, (1886) 118 U. S. 109; Barron *v.* Burnside, (1887) 121 U. S. 186; Lincoln County *v.* Luning, (1890) 133 U. S. 529; Hans *v.* Louisiana, (1890) 134 U. S. 1; North Carolina *v.* Temple, (1890) 134 U. S. 22; *In re* Neagle, (1890) 135 U. S. 1; Nashua, etc., R. Corp. *v.* Boston, etc., R. Corp., (1890) 136 U. S. 356; Jones *v.* U. S., (1890) 137 U. S. 202; Cook County *v.* Calumet, etc., Canal, etc., Co., (1891) 138 U. S. 635; Manchester *v.* Massachusetts, (1891) 139 U. S. 240; *In re* Garnett, (1891) 141 U. S. 1; U. S. *v.* Texas, (1892) 143 U. S. 621; Southern Pac. R. Co. *v.* Denton, (1892) 146 U. S. 202; Cooke *v.* Avery, (1893) 147 U. S. 375; Cates *v.* Allen, (1893) 149 U. S. 451; McNulty *v.* Cali-

fornia, (1893) 149 U. S. 645; *In re* Tyler, (1893) 149 U. S. 164; Newport Light Co. *v.* Newport, (1894) 151 U. S. 527; New York, etc., R. Co. *v.* Bristol, (1894) 151 U. S. 556; Israel *v.* Arthur, (1894) 152 U. S. 355; Michigan *v.* Flint, etc., R. Co., (1894) 152 U. S. 363; New Orleans *v.* Benjamin, (1894) 153 U. S. 411; Mobile, etc., R. Co. *v.* Tennessee, (1894) 153 U. S. 486; Reagan *v.* Farmers' L. & T. Co., (1894) 154 U. S. 362; Interstate Commerce Commission *v.* Brimson, (1894) 154 U. S. 447; Plumley *v.* Massachusetts, (1894) 155 U. S. 461; Andrews *v.* Swartz, (1895) 156 U. S. 272; St. Louis, etc., R. Co. *v.* Gill, (1895) 156 U. S. 649; Stevens *v.* Nichols, (1895) 157 U. S. 370; *In re* Debs, (1895) 158 U. S. 564; Central Land Co. *v.* Laidley, (1895) 159 U. S. 103; Folsom *v.* Township Ninety-Six, (1895) 159 U. S. 611; Laing *v.* Rigney, (1896) 160 U. S. 531; St. Louis, etc., R. Co. *v.* James, (1896) 161 U. S. 545; Woodruff *v.* Mississippi, (1896) 162 U. S. 291; Fallbrook Irrigation Dist. *v.* Bradley, (1896) 164 U. S. 112; Scott *v.* Donald, (1897) 165 U. S. 107; Robertson *v.* Baldwin, (1897) 165 U. S. 275; Chicago, etc., R. Co. *v.* Chicago, (1897) 166 U. S. 226; Forsyth *v.* Hammond, (1897) 166 U. S. 506; Oxley Stave Co. *v.* Butler County, (1897) 166 U. S. 648; *In re* Lennon, (1897) 166 U. S. 548; City R. Co. *v.* Citizens' St. R. Co., (1897) 166 U. S. 557; Douglas *v.* Kentucky, (1897) 168 U. S. 488; Miller *v.* Cornwall R. Co., (1897) 168 U. S. 131; Baker *v.* Grice, (1898) 169 U. S. 284; Smyth *v.* Ames, (1898) 169 U. S. 466; Backus *v.* Fort St. Union Depot Co., (1898) 169 U. S. 557; Tinsley *v.* Anderson, (1898) 171 U. S. 101; Walla Walla *v.* Walla Walla Water Co., (1898) 172 U. S. 1; Green Bay, etc., Canal Co. *v.* Patten Paper Co., (1898) 172 U. S. 58; Meyer *v.* Richmond, (1898) 172 U. S. 82; McCullough *v.* Virginia, (1898) 172 U. S. 102; Fitts *v.* McGhee, (1899) 172 U. S. 516; Dewey *v.* Des Moines, (1899) 173 U. S. 193; Nicol *v.* Ames, (1899) 173 U. S. 509; Covington *v.* Kentucky, (1899) 173 U. S. 231; La Abra Silver Min. Co. *v.* U. S., (1899) 175 U. S. 423; Louisiana *v.* Texas, (1900) 176 U. S. 1; Whitman *v.* Oxford Nat. Bank, (1900) 176 U. S. 559; Hancock Nat. Bank *v.* Farnum, (1900) 176 U. S. 640; Carter *v.* Texas, (1900) 177 U. S. 442; Smith *v.* Reeves, (1900) 178 U. S. 436; Western Union Tel. Co. *v.* Ann Arbor R. Co., (1900) 178 U. S. 239; Wiley *v.* Sinkler, (1900) 179 U. S. 58; Missouri *v.* Illinois, (1901) 180 U. S. 208; Eastern Bldg., etc., Assoc. *v.* Welling, (1901) 181 U. S. 47; Dooley *v.* U. S., (1901) 182 U. S. 222; Tullock *v.* Mulvane, (1902) 184 U. S. 497; Patton *v.* Brady, (1902) 184 U. S. 608; Kansas *v.* Colorado, (1902) 185 U. S. 125; Swafford *v.* Templeton, (1902) 185 U. S. 487; Mobile Transp. Co. *v.* Mobile, (1903) 187 U. S. 479; Andrews *v.* Andrews, (1903) 188 U. S. 14; Hooker *v* Los Angeles, (1903) 188 U. S. 314; Cummings *v.* Chicago, (1903) 188 U. S. 410; Schaefer *v.* Werling, (1903) 188 U. S. 516; The Roanoke, (1903) 189 U. S. 185; Detroit, etc., R. Co. *v.* Osborn,

Chapter IV.

Treason.

37. An immunity. From the charge of treason against the United States, except for levying war against them, or for adhering to their enemies, giving them aid and comfort. (Art. III, Sec. 3, Cl. 1. See *Of Treason, supra,* pp. 74 *et seq.*)

Evidence of treason.

38. A right. To demand, in cases of trial for treason, the testimony of two witnesses to the same overt act, or a confession in open court, as the only basis of conviction. (Art. III, Sec. 3, Cl. 1.)[7]

Attainder.

39. An immunity. Against any attainder of

(1903) 189 U. S. 383; Patterson *v.* Bark Eudora, (1903) 190 U. S. 169; Howard *v.* Fleming, (1903) 191 U. S. 126; Arbuckle *v.* Blackburn, (1903) 191 U. S. 405; Deposit Bank *v.* Frankfort, (1903) 191 U. S. 499; Spencer *v.* Duplan Silk Co., (1903) 191 U. S. 526; Wabash R. Co. *v.* Pearce, (1904) 192 U. S. 179; Rogers *v.* Alabama, (1904) 192 U. S. 226; South Dakota *v.* North Carolina, (1904) 192 U. S. 286; Bankers Mut. Casualty Co. *v.* Minneapolis, etc., R. Co., (1904) 192 U. S. 371; Spreckels Sugar Refining Co. *v.* McClain, (1904) 192 U. S. 397.

[7] U. S. *v.* Insurgents, (1795) 2 Dall. (U. S.) 335; U. S. *v.* Mitchell, (1795) 2 Dall. (U. S.) 348; *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 75; Burr's Trial, 4 Cranch (U. S.) 469.

"To prevent the possibility of those calamities which result from the extension of treason to offenses of minor importance, that great fundamental law which defines and limits the various departments of our government has given a rule on the subject both to the legislature and the courts of America, which neither can be permitted to transcend. 'Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.'" *Per* Mr. Chief Justice Marshall, in *Ex p.* Bollman, (1807) 4 Cranch (U. S.) 126. See also U. S. *v.* Hoxie, (1808) 1 Paine (U. S.) 265.

"In the earlier periods of English history, the judges were often the pliant tools of the king, and exercised the power of punishing for constructive treasons, under circumstances the most revolting and greatly to the oppression of innocent persons. The wise and sagacious framers of our Constitution have effectually guarded against such abuses of power, by declaring there shall be no conviction for this high crime on mere suspicion or on proof of any fact which is not an overt act of treason established by two witnesses." Charge to Grand Jury, (1861) 1 Bond (U. S.) 610.

treason working corruption of blood or forfeiture, except during the life of the person attainted. (Art. III, Sec. 3, Cl. 2.)[8]

"Full faith and credit."

40. A right. To demand that each State shall give full faith and credit to the public acts, records, and judicial proceedings of every other State. (Art. IV, Sec. 1.)[9]

[8] Bigelow *v.* Forrest, (1869) 9 Wall. (U. S.) 339; Day *v.* Micou, (1873) 18 Wall. (U. S.) 156; *Ex p.* Lange, (1873) 18 Wall. (U. S.) 163; Wallach *v.* Van Riswick, (1875) 92 U. S. 202; U. S. *v.* Dunnington, (1892) 146 U. S. 338.

"What was intended by the constitutional provision is free from doubt. In England, attainders of treason worked corruption of blood and perpetual forfeiture of the estate of the person attainted, to the disinherison of his heirs, or of those who would otherwise be his heirs. Thus innocent children were made to suffer because of the offense of their ancestor. When the Federal Constitution was framed, this was felt to be a great hardship, and even rank injustice. For this reason, it was ordained that no attainder of treason should work corruption of blood or forfeiture, except during the life of the person attainted." Wallach *v.* Van Riswick, (1875) 92 U. S. 210.

[9] Mills *v.* Duryee, (1813) 7 Cranch (U. S.) 481; Hampton *v.* M'Connel, (1818) 3 Wheat. (U. S.) 234; Mayhew *v.* Thatcher, (1821) 6 Wheat. (U. S.) 129; Darby *v.* Mayer, (1825) 10 Wheat. (U. S.) 465; U. S. *v.* Amedy, (1826) 11 Wheat. (U. S.) 392; Caldwell *v.* Carrington, (1835) 9 Pet. (U. S.) 86; M'Elmoyle *v.* Cohen, (1839) 13 Pet. (U. S.) 312; Augusta Bank *v.* Earle, (1839) 13 Pet. (U. S.) 519; Alabama State Bank *v.* Dalton, (1850) 9 How. (U. S.) 522; D'Arcy *v.* Ketchum, (1850) 11 How. (U. S.) 165; Christmas *v.* Russell, (1866) 5 Wall. (U. S.) 290; Green *v.* Van Buskirk, (1868) 7 Wall. (U. S.) 139; Paul *v.* Virginia, (1868) 8 Wall. (U. S.) 168; Board of Public Works *v.* Columbia College, (1873) 17 Wall. (U. S.) 521; Thompson *v.* Whitman, (1873) 18 Wall. (U. S.) 457; Pennoyer *v.* Neff, (1877) 95 U. S. 714; Bonaparte *v.* Appeal Tax Ct., (1882) 104 U. S. 592; Robertson *v.* Pickrell, (1883) 109 U. S. 608; Brown *v.* Houston, (1885) 114 U. S. 622; Hanley *v.* Donoghue, (1885) 116 U. S. 1; Renaud *v.* Abbott, (1886) 116 U. S. 277; Chicago, etc., R. Co. *v.* Wiggins Ferry Co., (1887) 119 U. S. 615; Borer *v.* Chapman, (1887) 119 U. S. 587; Cole *v.* Cunningham, (1890) 133 U. S. 107; Blount *v.* Walker, (1890) 134 U. S. 607; Simmons *v.* Saul, (1891) 138 U. S. 439; Reynolds *v.* Stockton, (1891) 140 U. S. 254; Carpenter *v.* Strange,

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Universal privileges.

41. A right. In the citizens of each State to enjoy all the privileges and immunities of citizens in the several States. (Art. IV, Sec. 2, Cl. 1.)[1]

(1891) 141 U. S. 87; Huntington *v.* Attrill, (1892) 146 U. S. 657; Glenn *v.* Garth, (1893) 147 U. S. 360; Laing *v.* Rigney, (1896) 160 U. S. 531; Chicago, etc., R. Co. *v.* Sturm, (1899) 174 U. S. 710; Thormann *v.* Frame, (1900) 176 U. S. 350; Hancock Nat. Bank *v.* Farnum, (1900) 176 U. S. 640; Clarke *v.* Clarke, (1900) 178 U. S. 186; Wilkes County *v.* Coler, (1901) 180 U. S. 506; W. W. Cargill Co. *v.* Minnesota, (1901) 180 U. S. 452; Johnson *v.* New York L. Ins. Co., (1903) 187 U. S. 491; Andrews *v.* Andrews, (1903) 188 U. S. 14; Blackstone *v.* Miller, (1903) 188 U. S. 189; Finney *v.* Guy, (1903) 189 U. S. 335; Wabash R. Co. *v.* Flannigan, (1904) 192 U. S. 29; German Sav., etc., Soc. *v.* Dormitzer, (1904) 192 U. S. 125; Wedding *v.* Meyler, (1904) 192 U. S. 573.

[1] U. S. Bank *v.* Deveaux, (1809) 5 Cranch (U. S.) 61; Gassies *v.* Ballon, (1832) 6 Pet. (U. S.) 761; Rhode Island *v.* Massachusetts, (1838) 12 Pet. (U. S.) 657; Augusta Bank *v.* Earle, (1839) 13 Pet. (U. S.) 519; Moore *v.* Illinois, (1852) 14 How. (U. S.) 13; Conner *v.* Elliott, (1855) 18 How. (U. S.) 591; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Crandall *v.* Nevada, (1867) 6 Wall. (U. S.) 35; Woodruff *v.* Parham, (1868) 8 Wall. (U. S.) 123; Paul *v.* Virginia, (1868) 8 Wall. (U. S.) 168; Downham *v.* Alexandria, (1869) 10 Wall. (U. S.) 173; Liverpool Ins. Co. *v.* Massachusetts, (1870) 10 Wall. (U. S.) 566; Ward *v.* Maryland, (1870) 12 Wall. (U. S.) 418; Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36; Bradwell *v.* State, (1872) 16 Wall. (U. S.) 130; Chemung Canal Bank *v.* Lowery, (1876) 93 U. S. 72; McCready *v.* Virginia, (1876) 94 U. S. 391; Philadelphia Fire Assoc. *v.* New York, (1886) 119 U. S. 110; Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 181; Kimmish *v.* Ball, (1889) 129 U. S. 217; Cole *v.* Cunningham, (1890) 133 U. S. 107; Manchester *v.* Massachusetts, (1891) 139 U. S. 240; Pittsburg, etc., Coal Co. *v.* Bates, (1895) 156 U. S. 577; Vance *v.* W. A. Vandercook Co., (1898) 170 U. S. 438; Blake *v.* McClung, (1898) 172 U. S. 239; Williams *v.* Fears, (1900) 179 U. S. 270; Travellers' Ins. Co. *v.* Connecticut, (1902) 185 U. S. 364; Chadwick *v.* Kelley, (1903) 187 U. S. 540; Diamond Glue Co. *v.* U. S. Glue Co., (1903) 187 U. S. 611; Blackstone *v.* Miller, (1903) 188 U. S. 189; Anglo-American Provision Co. *v.* Davis Provision Co., (1903) 191 U. S. 373.

"The Constitution of the United States declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. And although these privileges and immunities, for greater safety, are placed under the guardianship

Extradition of criminals.

42. A right. To demand from any State the extradition and removal of any person who shall flee thereto, who is charged, in another State, with treason, felony, or other crime. (Art. IV, Sec. 2, Cl. 2).[2]

Extradition of persons held to service.

43. A right. To demand the delivery, on claim of the party entitled, of any person held to service or labor, in one State, who has escaped to another State. (Art. IV, Sec. 2, Cl. 3.)[3]

Protection of States.

44. A right. To the performance of the guarantee of the United States that every State in the Union shall have a republican form of government, and that the United States will protect each of them from invasion and against domestic violence. (Art. IV, Sec. 4.)[4]

of the general government, still the States may by their laws and in their tribunals protect and enforce them. They have not only the power, but it is a duty enjoined upon them by this provision in the Constitution." *Per* Mr. Justice Taney, in Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 629.

[2] Holmes *v.* Jennison, (1840) 14 Pet. (U. S.) 540; Kentucky *v.* Dennison, (1860) 24 How. (U. S.) 66; Taylor *v.* Taintor, (1872) 16 Wall. (U. S.) 366; Carroll County *v.* Smith, (1884) 111 U. S. 556; *Ex p.* Reggel, (1885) 114 U. S. 642; Mahon *v.* Justice, (1888) 127 U. S. 700; Lascelles *v.* Georgia, (1893) 148 U. S. 537; Utter *v.* Franklin, (1899) 172 U. S. 416.

[3] Prigg *v.* Pennsylvania, (1842) 16 Pet. (U. S.) 539; Jones *v.* Van Zandt, (1847) 5 How. (U. S.) 215; Strader *v.* Graham, (1850) 10 How. (U. S.) 82; Moore *v.* Illinois, (1852) 14 How. (U. S.) 13; Dred Scott *v.* Sandford, (1856) 19 How. (U. S.) 393; Ableman *v.* Booth, (1858) 21 How. (U. S.) 506.

"Every State has an undoubted right to determine the *status*, or domestic and social condition, of the persons domiciled within its territory; except in so far as the powers of the States in this respect are restrained, or duties and obligations imposed upon them, by the Constitution of the United States." Strader *v.* Graham, (1850) 10 How. (U. S.) 93.

[4] Luther *v.* Borden, (1849) 7 How. (U. S.) 1; Texas *v.* White, (1868) 7 Wall. (U. S.) 700; *In re* Duncan, (1891) 139 U. S. 449; Taylor *v.* Beckham, (1900) 178 U. S. 548.

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45. A right. In each State to equal suffrage in the Senate. (Art. V.)

Equality in the Senate.

These being the only rights, privileges, and immunities guaranteed to citizens by the Constitution itself, the following additional appear in the first twelve amendments to the Constitution:[5]

Freedom of religion, of speech, and of the press.

46. An immunity. Against any law of Congress respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press. (Art. I.)[6]

Assembly and petition.

47. A right. Of the people peaceably to assemble, and to petition the government for a redress of grievances. (Art. I.)[7]

[5] "It was one of the objections most seriously urged against the new Constitution by those who opposed its ratification by the States, that it contained no formal Bill of Rights. (Federalist, No. lxxxiv.) And the State of Virginia accompanied her ratification by the recommendation of an amendment embodying such a bill. (3 Elliot's Debates, 661.) The feeling on this subject led to the adoption of the first ten amendments to that instrument at one time, shortly after the government was organized. These are all designed to operate as restraints on the general government, and most of them for the protection of private rights of persons and property. Notwithstanding this reproach, however, there are many provisions in the original instrument of this latter character." Kring *v.* Missouri, (1882) 107 U. S. 226.

[6] Terrett *v.* Taylor, (1815) 9 Cranch (U. S.) 43; Vidal *v.* Philadelphia, (1844) 2 How. (U. S.) 127; *Ex p.* Garland, (1866) 4 Wall. (U. S.) 333; U. S. *v.* Cruikshank, (1875) 92 U. S. 542; Reynolds *v.* U. S., (1878) 98 U. S. 145; Spies *v.* Illinois, (1887) 123 U. S. 131; Davis *v.* Beason, (1890) 133 U. S. 333; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; Church of Jesus Christ *v.* U. S., (1890) 136 U. S. 1; *In re* Rapier, (1892) 143 U. S. 110; Horner *v.* U. S., (1892) 143 U. S. 207; Bradfield *v.* Roberts, (1899) 175 U. S. 291.

[7] "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under

48. A right. Of the people to keep and bear arms. A right not to be infringed. (Art. II.)[8] Bearing arms.

49. An immunity. From the quartering of troops in any house in time of peace without the consent of the owner, or in time of war, except in a manner to be prescribed by law. (Art. III.) Quartering troops.

50. An immunity. Against unreasonable searches or seizures. (Art. IV.)[9] Searches and seizures.

51. A right. To demand that search warrants shall not issue except upon probable cause, supported by oath or affirmation and particularly de- Search warrants.

the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." U. S. *v.* Cruikshank, (1875) 92 U. S. 552.

[8] Presser *v.* Illinois, (1886) 116 U. S. 252; Spies *v.* Illinois, (1887) 123 U. S. 131; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31.

"This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to what is called, in *The City of New York v. Miln*, (1837) 11 Pet. (U. S.) 139, the 'powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police,' 'not surrendered or restrained' by the Constitution of the United States." U. S. *v.* Cruikshank, (1875) 92 U. S. 553.

[9] Smith *v.* Maryland, (1855) 18 How. (U. S.) 71; Murray *v.* Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 272; *Ex p.* Milligan, (1866) 4 Wall. (U. S.) 2; Boyd *v.* U. S., (1886) 116 U. S. 616; Spies *v.* Illinois, (1887) 123 U. S. 131; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; Fong Yue Ting *v.* U. S., (1893) 149 U. S. 698; Interstate Commerce Commission *v.* Brimson, (1894) 154 U. S. 447; *In re* Chapman, (1897) 166 U. S. 661; Adams *v.* New York, (1904) 192 U. S. 585.

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scribing the place to be searched, and the person or things to be seized. (Art. IV.)[1]

Grand jury.

52. A right. That no citizen be held to answer to the Federal government for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service. (Art. V.)[2]

[1] "The security intended to be guaranteed by the Fourth Amendment against wrongful search and seizures is designed to prevent violations of private security in person and property and unlawful invasion of the sanctity of the home of the citizen by officers of the law, acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted. But the English and nearly all of the American cases have declined to extend this doctrine to the extent of excluding testimony which has been obtained by such means, if it is otherwise competent." Adams *v.* New York, (1904) 192 U. S. 598.

[2] U. S. *v.* Perez, (1824) 9 Wheat. (U. S.) 579; Barron *v.* Baltimore, (1833) 7 Pet. (U. S.) 243; Fox *v.* Ohio, (1847) 5 How. (U. S.) 410; West River Bridge Co. *v.* Dix, (1848) 6 How. (U. S.) 507; Mitchell *v.* Harmony, (1851) 13 How. (U. S.) 115; Moore *v.* Illinois, (1852) 14 How. (U. S.) 13; Murray *v.* Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 272; Dynes *v.* Hoover, (1857) 20 How. (U. S.) 65; Withers *v.* Buckley, (1857) 20 How. (U. S.) 84; Gilman *v.* Sheboygan, (1862) 2 Black (U. S.) 510; *Ex p.* Milligan, (1866) 4 Wall. (U. S.) 2; Twitchell *v.* Pennsylvania, (1868) 7 Wall. (U. S.) 321; Hepburn *v.* Griswold, (1869) 8 Wall. (U. S.) 603; Miller *v.* U. S., (1870) 11 Wall. (U. S.) 268; Legal Tender Cases, (1870) 12 Wall. (U. S.) 457; Pumpelly *v.* Green Bay, etc., Canal Co., (1871) 13 Wall. (U. S.) 166; Osborn *v.* Nicholson, (1871) 13 Wall. (U. S.) 654; *Ex p.* Lange, (1873) 18 Wall. (U. S.) 163; Kohl *v.* U. S., (1875) 91 U. S. 367; Davidson *v.* New Orleans, (1877) 96 U. S. 97; Sinking Fund Cases, (1878) 99 U. S. 700; Langford *v.* U. S., (1879) 101 U. S. 341; Kelly *v.* Pittsburgh, (1881) 104 U. S. 78; *Ex p.* Wall, (1882) 107 U. S. 265; U. S. *v.* Jones, (1883) 109 U. S. 513; U. S. *v.* Great Falls Mfg. Co., (1884) 112 U. S. 645; *Ex p.* Wilson, (1885) 114 U. S. 417; Boyd *v.* U. S., (1886) 116 U. S. 616; Mackin *v.* U. S., (1886) 117 U. S. 348; *Ex p.* Bain, (1887) 121 U. S. 1; Parkinson *v.* U. S., (1887) 121 U. S. 281; Spies *v.* Illinois, (1887) 123 U. S. 131; Callan *v.* Wilson, (1888) 127 U. S. 540; U. S. *v.* De Walt, (1888) 128 U. S. 393;

53. An immunity. From being twice put in jeopardy of life or limb for the same offense. (Art. V.)[3] Former jeopardy.

54. An immunity. From being a witness against himself. (Art. V.)[4] Self-incrimination.

55. A right. To due process of law before being deprived of life, liberty, or property. (Art. V.)[5] Due process of law.

56. A right. To just compensation for any property taken for public use. (Art. V.)[6] Compensation for property taken.

57. A right. To speedy and public trial in all cases of criminal prosecutions by an impartial jury Trial of persons accused of crime.

Manning *v.* French, (1890) 133 U. S. 186; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; Louisville, etc., R. Co. *v.* Woodson, (1890) 134 U. S. 614; *In re* Ross, (1891) 140 U. S. 453; Counselman *v.* Hitchcock, (1892) 142 U. S. 547; Simmons *v.* U. S., (1891) 142 U. S. 148; Thorington *v.* Montgomery, (1893) 147 U. S. 490; Monongahela Nav. Co. *v.* U. S., (1893) 148 U. S. 312; Fong Yue Ting *v.* U. S., (1893) 149 U. S. 698; Lees *v.* U. S., (1893) 150 U. S. 476; Marchant *v.* Pennsylvania R. Co., (1894) 153 U. S. 380; Linford *v.* Ellison, (1894) 155 U. S. 503; Johnson *v.* Sayre, (1895) 158 U. S. 109; Sweet *v.* Rechel, (1895) 159 U. S. 380; Brown *v.* Walker, (1896) 161 U. S. 591; Wong Wing *v.* U. S., (1896) 163 U. S. 228; Talton *v.* Mayes, (1896) 163 U. S. 376; Bauman *v.* Ross, (1897) 167 U. S. 548; Wilson *v.* Lambert, (1898) 168 U. S. 611; U. S. *v.* Joint Traffic Assoc., (1898) 171 U. S. 505; Maxwell *v.* Dow, (1900) 176 U. S. 581; Scranton *v.* Wheeler, (1900) 179 U. S. 141; McDonald *v.* Massachusetts, (1901) 180 U. S. 311; Neely *v.* Henkel, (1901) 180 U. S. 109; French *v.* Barber Asphalt Paving Co., (1901) 181 U. S. 324; Wight *v.* Davidson, (1901) 181 U. S. 371; Tonawanda *v.* Lyon, (1901) 181 U. S. 389; Capital City Dairy Co. *v.* Ohio, (1902) 183 U. S. 238; Hanover Nat. Bank *v.* Moyses, (1902) 186 U. S. 181; Dreyer *v.* Illinois, (1902) 187 U. S. 71; Lone Wolf *v.* Hitchcock, (1903) 187 U. S. 553; U. S. *v.* Lynah, (1903) 188 U. S. 445; Japanese Immigrant Case, (1903) 189 U. S. 86; Hawaii *v.* Mankichi, (1903) 190 U. S. 197; Bedford *v.* U. S., (1904) 192 U. S. 217; Buttfield *v.* Stranahan, (1904) 192 U. S. 470; Adams *v.* New York, (1904) 192 U. S. 585.

[3] See cases cited in note 2, *supra.*

[4] See cases cited in note 2, *supra.*

[5] See cases cited in note 2, *supra.*

[6] See cases cited in note 2, *supra.*

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of the district wherein any crime is charged to have been committed, the district to have been previously ascertained by law; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. (Art. VI.)[7]

Juries in civil cases.

58. A right. In suits at common law, involving a value exceeding twenty dollars, to a trial by jury. (Art. VII.)[8]

[7] U. S. *v.* Coolidge, (1816) 1 Wheat. (U. S.) 415; *Ex p.* Kearney, (1822) 7 Wheat. (U. S.) 38; U. S. *v.* Mills, (1833) 7 Pet. (U. S.) 142; Barron *v.* Baltimore, (1833) 7 Pet. (U. S.) 243; Fox *v.* Ohio, (1847) 5 How. (U. S.) 410; Withers *v.* Buckley, (1857) 20 How. (U. S.) 84; *Ex p.* Milligan, (1866) 4 Wall. (U. S.) 2; Twitchell *v.* Pennsylvania, (1868) 7 Wall. (U. S.) 321; Miller *v.* U. S., (1870) 11 Wall. (U. S.) 268; U. S. *v.* Cook, (1872) 17 Wall. (U. S.) 168; U. S. *v.* Cruikshank, (1875) 92 U. S. 542; Reynolds *v.* U. S., (1878) 98 U. S. 145; Spies *v.* Illinois, (1887) 123 U. S. 131; Brooks *v.* Missouri, (1888) 124 U. S. 394; Callan *v.* Wilson, (1888) 127 U. S. 540; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; Jones *v.* U. S., (1890) 137 U. S. 202; Cook *v.* U. S., (1891) 138 U. S. 157; *In re* Shibuya Jugiro, (1891) 140 U. S. 291; *In re* Ross, (1891) 140 U. S. 453; Fong Yue Ting *v.* U. S., (1893) 149 U. S. 698; Mattox *v.* U. S., (1895) 156 U. S. 237; Rosen *v.* U. S., (1896) 161 U. S. 29; U. S. *v.* Zucker, (1896) 161 U. S. 475; Wong Wing *v.* U. S., (1896) 163 U. S. 228; Thompson *v.* Utah, (1898) 170 U. S. 343; Maxwell *v.* Dow, (1900) 176 U. S. 581; Motes *v.* U. S., (1900) 178 U. S. 458; Fidelity, etc., Co. *v.* U. S., (1902) 187 U. S. 315; Hawaii *v.* Mankichi, (1903) 190 U. S. 197.

[8] U. S. *v.* La Vengeance, (1796) 3 Dall. (U. S.) 297; Columbia Bank *v.* Okely, (1819) 4 Wheat. (U. S.) 235; Parsons *v.* Bedford, (1830) 3 Pet. (U. S.) 433; Livingston *v.* Moore, (1833) 7 Pet. (U. S.) 469; Webster *v.* Reid, (1850) 11 How. (U. S.) 437; Pennsylvania *v.* Wheeling, etc., Bridge Co., (1851) 13 How. (U. S.) 518; Justices *v.* Murray, (1869) 9 Wall. (U. S.) 274; Edwards *v.* Elliott, (1874) 21 Wall. (U. S.) 532; Pearson *v.* Yewdall, (1877) 95 U. S. 294; McElrath *v.* U. S., (1880) 102 U. S. 426; Spies *v.* Illinois, (1887) 123 U. S. 131; Arkansas Valley Land, etc., Co. *v.* Mann, (1889) 130 U. S. 69; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; Whitehead *v.* Shattuck, (1891), 138 U. S.

Retrial of facts.

59. An immunity. From having any fact tried by a jury reëxamined in any court of the United States, otherwise than according to the rules of common law. (Art. VII.)[9]

Bail, fines, and punishments.

60. An immunity. Against the requirement of excessive bail, against the imposition of excessive fines, and against the infliction of cruel and unusual punishments. (Art. VIII.)[1]

Effect of enumeration of rights.

61. A declaration. That the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. (Art. IX.)[2]

Reservation of powers.

62. A guarantee. That the powers not delegated to the United States by the Constitution, nor

146; Scott *v.* Neely, (1891) 140 U. S. 106; Cates *v.* Allen, (1893) 149 U. S. 451; Fong Yue Ting *v.* U. S., (1893) 149 U. S. 698; Coughran *v.* Bigelow, (1896) 164 U. S. 301; Walker *v.* New Mexico, etc., R. Co., (1897) 165 U. S. 593; Chicago, etc., R. Co. *v.* Chicago, (1897) 166 U. S. 226; American Pub. Co. *v.* Fisher, (1897) 166 U. S. 464; Fidelity, etc., Co. *v.* U. S., (1902) 187 U. S. 315.

[9] See cases cited in note 1, *supra.*

[1] Pervear *v.* Massachusetts, (1866) 5 Wall. (U. S.) 475; Spies *v.* Illinois, (1887) 123 U. S. 131; Manning *v.* French, (1890) 133 U. S. 186; Eilenbecker *v.* Plymouth County, (1890) 134 U. S. 31; McElvaine *v.* Brush, (1891) 142 U. S. 155; O'Neil *v.* Vermont, (1892) 144 U. S. 323; McDonald *v.* Massachusetts, (1901) 180 U. S. 311.

[2] Livingston *v.* Moore, (1833) 7 Pet. (U. S.) 469; Spies *v.* Illinois, (1887) 123 U. S. 131.

"This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist." M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 405.

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prohibited to the States, are reserved to the States respectively, or to the people. (Art. X.)[3]

What powers affected by the amendments.

In *Lloyd v. Dollison,* decided May 16, 1904, the

[3] Chisholm *v.* Georgia, (1793) 2 Dall. (U. S.) 419; Hollingsworth *v.* Virginia, (1798) 3 Dall. (U. S.) 378; Martin *v.* Hunter, (1816) 1 Wheat. (U. S.) 304; M'Culloch *v.* Maryland, (1819) 4 Wheat. (U. S.) 316; Anderson *v.* Dunn, (1821) 6 Wheat. (U. S.) 204; Cohen *v.* Virginia, (1821) 6 Wheat. (U. S.) 264; Osborn *v.* U. S. Bank, (1824) 9 Wheat. (U. S.) 738; Buckner *v.* Finley, (1829) 2 Pet. (U. S.) 586; Ableman *v.* Booth, (1858) 21 How. (U. S.) 506; Collector *v.* Day, (1870) 11 Wall. (U. S.) 113; Claflin *v.* Houseman, (1876) 93 U. S. 130; Inman Steamship Co. *v.* Tinker, (1876) 94 U. S. 238; U. S. *v.* Fox, (1876) 94 U. S. 315; Tennessee *v.* Davis, (1879) 100 U. S. 257; Spies *v.* Illinois, (1887) 123 U. S. 131; Pollock *v.* Farmers' L. & T. Co., (1895) 157 U. S. 429; Forsyth *v.* Hammond, (1897) 166 U. S. 506; St. Anthony Falls Water Power Co. *v.* St. Paul Water Com'rs, (1897) 168 U. S. 349; Missouri, etc., R. Co., *v.* Haber, (1898) 169 U. S. 613; Hancock Mut. L. Ins. Co. *v.* Warren, (1901) 181 U. S. 73; Kansas *v.* Colorado, (1902) 185 U. S. 125; Andrews *v.* Andrews, (1903) 188 U. S. 14; Church *v.* Kelsey, (1887) 121 U. S. 282; Ouachita Packet Co. *v.* Aiken, (1887) 127 U. S. 444; Western Union Tel. Co. *v.* Pendleton, (1887) 122 U. S. 347; Bowman *v.* Chicago, etc., R. Co., (1888) 125 U. S. 465; Mahon *v.* Justice, (1888) 127 U. S. 700; Leisy *v.* Hardin, (1890) 135 U. S. 100; Manchester *v.* Massachusetts, (1891) 139 U. S. 240.

"The perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. . . . Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Texas *v.* White, (1868) 7 Wall. (U. S.) 700.

Supreme Court said that the first eight amendments to the Constitution of the United States have reference to powers exercised by the government of the United States, and not to those of the States.[4]

The Eleventh Amendment to the Constitution relates simply to a limitation of Federal judicial power, and the Twelfth Amendment to the manner in which presidential and vice-presidential electors shall meet and cast and certify the electoral vote, and to the manner of deciding the result; so that they have no direct significance or bearing on the rights of citizenship.

Proposition and ratification — The first ten amendments.

The first ten amendments to the Constitution were proposed to the legislatures of the several States by the First Congress, September 25, 1789. They were ratified by the States, beginning with New Jersey, November 20, 1789, and ending with Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, or Massachusetts ratified them.

— The Eleventh Amendment.

The Eleventh Amendment was proposed to the legislatures of the several States by the Third Congress, September 5, 1794, and was declared to have been ratified by the legislatures of three-fourths of the States, in a message from the President to Congress dated January 8, 1798.

— The Twelfth Amendment.

The Twelfth Amendment to the Constitution was proposed to the legislatures of the several States by the Eighth Congress, December 12, 1803, in

[4] Ohio *v.* Dollison, (1904) 194 U. S. 445.

"That the first ten articles of amendment were not intended to limit the powers of the State governments in respect to their own people, but to operate on the national government alone, was decided more than a half century ago, and that decision has been steadily adhered to since." Spies *v.* Illinois, (1887) 123 U. S. 166.

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lieu of the original third paragraph of the first section of the second article, and was declared adopted in a proclamation of the Secretary of State, September 25, 1804.

From 1804 to 1865 the Constitution and twelve amendments remained unchanged.

— The last three amendments.

It was not until February 1, 1865, that the Thirteenth Amendment or first of the great "war amendments" was proposed. It was declared adopted in a proclamation of the secretary of state, dated December 18, 1865. The Fourteenth Amendment was proposed June 16, 1866, and declared adopted July 21, 1868. The Fifteenth Amendment was proposed February 27, 1869, and proclaimed as adopted March 30, 1870.

Let us now inquire into the rights, privileges, and immunities of citizens, as citizens of the United States and of their respective States, during the first seventy-six years of the Union, and afterwards examine how far these rights have been modified, or State and Federal control of them changed, by the amendments consequent upon the great Civil War.

The following reflections must result to every student of the subject, from the aforegoing recital.

Rights in the States before union.

First. That the correlative relations of government and citizenship were absolute and unqualified as between the States and their citizens after the States gained independence and prior to the formation of the Union.

Scope of Federal powers.

Second. That the Federal government when formed was one of limited scope and powers, and after its formation, notwithstanding the creation and

recognition of the sixty-odd Federal rights, privileges, and immunities as citizens of the Union, above set forth, a vast residuum of power and control over the rights, privileges, and immunities of their citizens remained in the States.

Reservation of undelegated powers.

Third. That the Federal government, while supreme in its sphere, was not framed to reach, and its creation did not affect, the undelegated powers of the States, in municipal affairs, over their own citizens, and that its power over such was expressly negatived by the instrument which brought it into being.

This is so manifest that the Constitution might well have begun with the language of the last of the ten first amendments, for the States existed before their representatives created the Union by the delegation of certain enumerated powers, and it goes without saying that "the powers not delegated to the United States by the Constitution are reserved to the States respectively or to the people."

Interpretations by the Supreme Court.

The rights of citizens, both as citizens of the United States and of the States, under nearly every clause of the Constitution and the first twelve amendments, were fully considered and defined before the outbreak of our great Civil War, by the Supreme Court of the United States. To the great glory of that tribunal it may be truly said that its interpretations have been universally recognized as wise, conservative and just; that if it has erred at all it has been rather towards the reserved powers of the States than towards an enlargement of Federal power by implication; that for the most part its judgments have remained unaffected by the excite-

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ments and changes of civil conflict; and that, even concerning such of its decisions as have been reversed by the logic of events, the wisdom and justice of its action upon the law and the facts then before it are now universally admitted, however bitterly they may have been aspersed at the time those decisions were rendered.

Necessity of studying the decisions.

The footnotes on the foregoing pages have set forth every decision of the Supreme Court upon every clause of the Constitution and amendments, bearing on the rights, privileges, and immunities of citizens, and a careful study of those decisions, as they relate to each of the subjects above set forth, must be the only satisfactory road to a mastery of the subjects. What follows is a mere surface index of the substance of the decisions upon the most important of those questions, intended to stimulate to a thorough study of the cases.

The citation of authorities in connection with a statement of the minor topics is deemed a sufficient reference to them.

Proceeding to consider the more important topics in the order of their presentation above, we come first to the subject—

Taxation of the Citizen (*Right 3 above*).

Limitations on the taxing power.

The power of taxation of the citizen by the States is unlimited by law save concerning taxes on exports or imports or tonnage duties. It is limited in the United States by only three conditions, the first being that it cannot tax exports, the second that direct taxes shall be apportioned among the several States according to their respective numbers, and the third

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that all duties, imposts, and excises shall be uniform throughout the United States.[5]

The grant of taxing power to the United States by the Constitution has been held to be an absolute grant subject only to the above limitations. Moreover, the power of taxation possessed by the United States over citizens of the District of Columbia has been held to be as unlimited as that possessed by the States over their citizens.

Decisions as to taxation.

Many cases have arisen in which the question was whether the particular tax involved in the controversy was a direct tax; but in all such cases the decision turned on that, as a question of fact, and was not instructive beyond the understanding of the particular statute involved; for, with the nature of the tax settled, the legal principles applicable to it were those stated above.

A most thorough and exhaustive discussion of the nature and extent of Federal taxing power and of what does and does not constitute a direct tax will be found in the case of *Pollock v. Farmers' L. & T. Co.*[6]

Of the Immunity of the Citizen from Arrest, while Attending Congress, and in Going to and Returning from the Same, and from Being Questioned in Any Other Place for Any Speech or Debate (*Immunity 7 above*).

History and nature of legislative privilege.

This is an old and salutary provision intended

[5] "Apportionment is an operation on States, and involves valuations and assessments which are arbitrary, and should not be resorted to but in case of necessity. Uniformity is an instant operation on individuals, without the intervention of assessments, or any regard to States, and is at once easy, certain, and efficacious." *Per* Paterson, J., in Hylton *v.* U. S., (1796) 3 Dall. (U. S.) 180.

[6] (1895) 157 U. S. 429, 158 U. S. 601.

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to secure to the representative the utmost degree of freedom in the discharge of his public duties. A similar provision will be found in the constitutions of most of the States concerning their State legislators, and the provision was adopted from the privileges accorded to members of the British Parliament. As to the nature and extent of the privilege, the case of *Kilbourn v. Thompson*[7] will be found instructive. Mr. Justice Story in his Commentaries on the Constitution (Sec. 866) refers to it as a "great and vital privilege."

Of the Immunity of the Citizen from State Interference with the Regulation of Commerce with Foreign Nations, and among the Several States and with the Indian Tribes (*Immunity 11 above*).

Early interference with commerce by the States.

This exclusive power of regulating commerce was conferred upon Congress for a reason. It was the offspring of many short-sighted, vexatious, and discriminating regulations imposed by the States upon vessels from other States entering their ports, while they retained the power to legislate on the subject under the Articles of Confederation. The transfer of the subject to exclusive Federal control was made deliberately after these embarrassing experiences. Nearly a hundred years ago the Supreme Court declared that it was doubtful whether any of the evils of weakness under the Articles of Confederation contributed more to the adoption of the Constitution than the conviction that "commerce ought to be regulated by Congress."

No clause of the Federal Constitution has given

[7] (1880) 103 U. S. 168.

rise to more litigation than this so-called commerce clause. It was first interpreted by Chief Justice Marshall in *Gibbons v. Ogden,*[7*] and its scope and legal effect have been under consideration in about two hundred and fifty cases since then decided by the Supreme Court of the United States. Many volumes have been written concerning the rights of citizens under this clause, and it would be beyond the scope of this work to set forth even an epitome of the decisions interpreting it rendered by the Supreme Court.

Litigation under the commerce clause.

We shall content ourselves with a statement of a few of the leading principles settled by the adjudicated cases, and the remark that the litigation has, for the most part, arisen out of acts of State legislatures, which have been challenged as invading the exclusive province of Congress to regulate interstate commerce, etc.

Source of litigation.

The first important case arising under this clause was, as above stated, *Gibbons v. Ogden,*[8] and the last case of importance decided by the Supreme Court is the celebrated so-called "merger decision," involving the right of Congress, in the exercise of its power to regulate commerce, to pass laws forbidding the merger of corporations owning parallel and competing lines and engaged in interstate commerce.[9]

Earliest and latest decisions.

The master mind of Marshall in the first case announced the following fundamental principles, which remain undisturbed:

1. That the grant of powers to Congress, in the particulars named, was not only absolute and em-

Exclusiveness of Federal power.

7* (1824) 9 Wheat. (U. S.) 1.

8 (1824) 9 Wheat. (U. S.) 1.

9 Northern Securities Co. *v.* U. S., (1904) 193 U. S. 197.

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braced the power to regulate navigation, but was exclusive of any rights of States to legislate on the subject.

What State rights unaffected.

2. That it did not affect the right of the States to legislate on purely internal commerce or to enact inspection laws and health laws, or purely police regulations.

3. That the laws last named "form a portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the general government; all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass. No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation."

Supremacy in case of conflict.

4. But where the States, in the exercise of the powers last mentioned, enact laws which come in conflict with Federal laws regulating commerce, the acts of the State must yield to the laws of Congress. That the nullity of all such acts is produced by the declaration that the Constitution is supreme.[1]

Test of State legislation.

Throughout all the multitudinous litigation which has followed arising under this clause the soundness

[1] The power conferred by this provision of the Constitution "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." *Per* Mr. Chief Justice Marshall, in Gibbons *v.* Ogden, (1824) 9 Wheat. (U. S.) 197.

of these principles has never been questioned. If the case has arisen upon a State statute the question has been, Does the State statute directly legislate on the forbidden subject? If so, it is void. Does it, although within the general scope of State power, in its effect regulate interstate commerce, etc? If so, it must yield to the exclusive power of Congress to control.[2]

If it be a mere regulation of inspection, or health, or exercise of the unquestioned police powers of the State, and its effect on commerce be merely incidental and not determinative, then it is a law within the powers of the State.

Test of Federal legislation.

If the question has arisen upon a Federal statute, the first inquiry has invariably been, Is the law, fairly construed, a regulation of that class of commerce committed absolutely and exclusively by the Constitution to the regulation of Congress? If so, it is a valid law, for the power to legislate is as broad as the grant of exclusive control.

Opposing theories of construction.

These questions have arisen in infinite variety and complexity, presenting new aspects in each successive case, and it is impossible to generalize them

[2] "The power to regulate commerce covers a wide field, and embraces a great variety of subjects. Some of these subjects call for uniform rules and national legislation; others can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operation to such localities respectively. To this extent the power to regulate commerce may be exercised by the States. Whether the power in any given case is vested exclusively in the general government depends upon the nature of the subject to be regulated." Gilman *v.* Philadelphia, (1865) 3 Wall. (U. S.) 726. See also Cooley *v.* Board of Wardens, (1851) 12 How. (U. S.) 319; *Ex p.* McNiel, (1871) 13 Wall. (U. S.) 240; Mobile County *v.* Kimball, (1881) 102 U. S. 691; Walling *v.* Michigan, (1886) 116 U. S. 455; Robbins *v.* Shelby County Taxing Dist., (1887) 120 U. S. 492.

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in this discussion. The opposing views in each case are the result of two theories which have given rise to most of the controversies between Federal and State authority, viz., on the one hand, the theory of broad latitudinarian construction of Federal powers, and, on the other, the theory of strict construction. Pursuing the one or the other of these theories, men of the highest intellect and character have, from the foundation of the government, been arrayed in opposition to each other upon every important question of construction that has arisen, and perhaps no more striking illustration of this irreconcilable conflict of views may be found in our whole judicial literature than in the earnest, almost angry, discordance of our Supreme Court in the last important decision on this commerce clause.[3]

Validity of fish and game laws.

But the constitutional inhibition does not prevent the States from enacting laws which prevent non-residents from engaging in certain classes of employments within their limits. Such, for example, is the right of a State to limit the right to fish and hunt within her borders to her own citizens. It has been held that the States did not invest the Federal government with any portion of their power and control over fishing and hunting within their borders; that the fish and shellfish and game in every State belong to, peculiarly and of right, and form part of the food supply of, the people in each State, and that it is within the police powers of the State, without any right of interference by Federal authority, to determine who shall and who shall not take the fish and game within her borders, and even to

[3] Northern Securities Co. *v.* U. S., (1904) 193 U. S. 197.

prohibit the shipping of the same beyond the limits of the State. Thus when a Virginia law punished a citizen of Maryland for taking oysters from Virginia oyster beds, and he claimed that he was engaged in commerce, the Supreme Court sustained the State law, and denied the claim of license to fish in Virginia waters as a matter of commercial right.[4] So, a law of Connecticut regulating the manner of taking game in that State and forbidding its exportation was held valid.[5] The duty of preserving the game was declared to be a trust for her own people. And State laws prohibiting exhaustive methods of fishing in waters within State jurisdiction, or the use of destructive instruments, are within the powers of the State.[6]

The Right of the Citizen to the Writ of Habeas Corpus (Right 23 above).

Importance of right to habeas corpus.

Blackstone calls the writ of habeas corpus "the most celebrated writ in the English law,"[7] and he refers to the famous Habeas Corpus Act of England, 31 Charles II, c. 2, as "frequently considered as another Magna Charta."

The Supreme Court of the United States thus characterizes it: "The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defense of personal freedom. In England, after a long struggle, it was firmly guaranteed by the famous Habeas Corpus Act of May 27, 1679. . . . It was brought to America by the colonists and

[4] McCready *v.* Virginia, (1876) 94 U. S. 391.
[5] Geer *v.* Connecticut, (1896) 161 U. S. 519.
[6] Lawton *v.* Steele, (1894) 152 U. S. 133.
[7] 3 Bl. Com. 129.

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claimed as among the immemorial rights descended to them from their ancestors."[8] Of this writ it may be said truly that it has elicited more encomiums from bench and bar than any other in the books, and that discussion of it seems to arouse whatever of eloquence judges and advocates may possess.

Form of the writ.

In form it is a writ emanating from the judicial source intrusted with its keeping and issuance, directed to the custodian of any person detained on a criminal or a civil charge, directing him to produce the body of the person in custody at a time and place designated in the writ, together with the causes of his detention, and then and there to submit to and receive whatever judgment the judge or court awarding the writ shall consider in that behalf. The name of the writ originated in the fact that at the time it came into use all writs in England were written in Latin, and this particular writ directed the custodian of the prisoner "habeas corpus," "thou shalt have the body" of so and so, at such and such time and place.

Various purposes of habeas corpus.

It is not within the purpose of this work to elaborate the different kinds of writs of habeas corpus and the different purposes for which they are invoked. That may be seen by reference to the authorities quoted. There were writs of *habeas corpus ad respondendum,* or to enable the party applying for the writ to obtain an answer of some sort from the party in custody; and writs *ad satisfaciendum,* or to satisfy a judgment or other demand, which writ does not exist with us; or *ad prosequendum, ad testificandum, ad deliberandum,* to

[8] *Ex p.* Yerger, (1868) 8 Wall. (U. S.) 95.

prosecute something, to testify about something, to deliberate about something. It is a common thing, for example, where a prisoner confined in jail or penitentiary is a necessary witness at a trial, to have him produced in court by a writ of *habeas corpus ad testificandum* issued by the trial judge or other authority.

The common writ.

But the common writ, the one cherished as none other, is the writ of *habeas corpus ad subjiciendum et recipiendum,* commanding the custodian to produce the body of his prisoner and submit to and receive whatever judgment the judge or court awarding the writ shall see fit to render. The power of the judge or court issuing the writ is, upon the production of the accused together with the causes of his detention, and after hearing the matter fully, to discharge him, admit him to bail, or remand him to custody. Nearly all the States have guarantees of the privileges of the writ of habeas corpus in their constitutions, and all have statutes providing for the manner of its issuing.

Federal and State writs.

But there is this distinction between writs of habeas corpus issued by Federal courts and judges and those issued by State courts and judges. A writ may issue from Federal authority to a person holding another in custody under State authority, in certain cases.[9] But a State court or judge cannot issue a writ of habeas corpus against a person having a prisoner in custody under the authority of the United States.[1]

[9] *In re* Neagle, (1890), 135 U. S. 1; *In re* Frederich, (1893) 149 U. S. 70.

[1] Ableman *v.* Booth, (1858) 21 How. (U. S.) 506; Tarble's Case, (1871) 13 Wall. (U. S.) 397.

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The reason for the distinction is obvious from the frame of the government, for the Federal jurisdiction is, in its sphere, supreme, and where Federal and State laws conflict the latter must yield to the former, and the view of their jurisdiction taken by Federal tribunals must prevail. So that while an inquiry by a Federal tribunal into a detention under State authority would be determinative, a like inquiry by a State tribunal into a detention under Federal authority would not be determinative or obligatory on the Federal authority.[2]

Origin, history, etc.— suspension.

The cases cited above in the note attached to the statement of the rights of the citizen to the writ of habeas corpus (note 4, p. 125) will furnish the student with such further information as he may desire concerning the origin, nature and history of, and the manner of applying for, the writ, and the cases to which it does not extend, as well as those to which it does extend. We may leave the subject with the final remark that the suspension of the writ, no matter what may have been the exigency on which such action has been justified, has always been viewed with the utmost jealousy by the American people,

2 "The great and leading intent of the Constitution and the law must be kept constantly in view upon the examination of every question of construction. That intent, in respect to the writ of habeas corpus, is manifest. It is that every citizen may be protected by judicial action from unlawful imprisonment. To this end the Act of 1789 provided that every court of the United States should have power to issue the writ. The jurisdiction thus given in law to the circuit and district courts is original; that given by the Constitution and the law to this court is appellate. Given in general terms, it must necessarily extend to all cases to which the judicial power of the United States extends, other than those expressly excepted from it." *Ex p.* Yerger, (1868) 8 Wall. (U. S.) 101.

and the opinion of Chief Justice Taney in the habeas corpus case of *Ex p. Milligan*[3] is one of the finest pieces of judicial eloquence in American jurisprudence.

Of the Immunity of the Citizen Against Bills of Attainder and Ex Post Facto Laws (Immunity 24 above).

This immunity is guaranteed, both as against the Nation and the State (Art. I, Sec. 9, Cl. 3, and Art. I, Sec. 10, Cl. 1.)[4]

Nature of bills of attainder.

A bill of attainder is a legislative act which inflicts punishments without a judicial trial.[5] Such bills were, in England, sometimes directed against individuals by name and sometimes against a class. They were contrary to the whole spirit of our institutions, and so were forbidden by general consent in the Constitution, both as against the Nation and the State.

Measures challenged as bills of attainder.

No question of importance arose from any attempt to pass such measures until the period of our

[3] (1866) 4 Wall. (U. S.) 2.

[4] "So much importance did the convention attach to it [the prohibition against the passage of any *ex post facto* law], that it is found twice in the Constitution, first as a restraint upon the power of the general government, and afterwards as a limitation upon the legislative power of the States." Kring *v.* Missouri, (1882) 107 U. S. 227.

"All the restrictions contained in the Constitution of the United States on the power of the State legislatures were provided in favor of the authority of the Federal government. The prohibition against their making any *ex post facto* laws was introduced for greater caution, and very probably arose from the knowledge that the Parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties." Calder *v.* Bull, (1798) 3 Dall. (U. S.) 386.

[5] Cummings *v.* Missouri, (1866) 4 Wall. (U. S.) 323.

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Civil War, when laws enacted by Missouri and West Virginia, and even the rules adopted by the Supreme Court of the United States itself, were challenged as in effect bills of attainder. The discussions in the arguments and opinions in the case of *Cummings v. Missouri*,[6] and *Ex p. Garland*,[7] are full of historical and legal information on this subject, and should be carefully read by the student.

Ex post facto laws.

"An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed." The State legislature can pass no *ex post facto* law.[8] This is the language of Chief Justice Marshall in the first case in which such legislation came under the eye of the Supreme Court. And of the reasons leading to the adoption of those clauses of the Constitution forbidding such legislation either by the Nation or the State, he said: "Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment. . . . The restrictions on the legislative power of the States are obviously founded in this sentiment."

But an act imposing a succession tax on an estate

[6] (1866) 4 Wall. (U. S.) 277.

[7] (1866) 4 Wall. (U. S.) 333.

[8] Fletcher *v.* Peck, (1810) 6 Cranch (U. S.) 138.

"Laws of this character are oppressive, unjust, and tyrannical; and, as such, are condemned by the universal sentence of civilized man. The injustice and tyranny which characterizes *ex post facto* laws consists altogether in their retrospective operation, which applies with equal force, although not exclusively, to bills of attainder." Ogden *v.* Saunders, (1827) 12 Wheat. (U. S.) 266.

after its devolution, during the period of administration, was held not to be an *ex post facto* law.[9]

Of the Immunity of the Citizen Against State Laws Impairing the Obligation of Contracts (Immunity 29 above).

General considerations.

The same reasons which prompted the Federal guarantee against the passage of bills of attainder or *ex post facto* laws by the States doubtless produced this guarantee also.[1] It has given rise to an immense amount of litigation. The principle is so plain that a statement of the law is sufficient, but the difficulty and doubt in the many cases that have cussion of the nature and extent of the rights of the arisen have been in determining whether the State

[9] Carpenter *v.* Pennsylvania, (1854) 17 How. (U. S.) 456.

[1] "As the clause was first adopted, the words concerning contracts were not in it, because it was supposed that the phrase '*ex post facto* law' included laws concerning contracts as well as others. But it was ascertained before the completion of the instrument that this was a phrase which, in English jurisprudence, had acquired a signification limited to the criminal law, and the words 'or law impairing the obligation of contracts' were added to give security to rights resting in contracts. 2 Bancroft's History of the Constitution, 213." Kring *v.* Missouri, (1882) 107 U. S. 227.

"The evil which this inhibition on the States was intended to prevent is found in the history of our Revolution. By repeated acts of legislation in the different States, during that eventful period, the obligation of contracts was impaired. The time and mode of payment were altered by law; and so far was this interference of legislation carried, that confidence between man and man was well-nigh destroyed. Those proceedings grew out of the paper system of that day; and the injuries which they inflicted were deeply felt in the country at the time the Constitution was adopted. The provision was designed to prevent the States from following the precedent of legislation so demoralizing in its effects, and so destructive to the commercial prosperity of a country." *Per* Mr. Justice McLean, in Charles River Bridge *v.* Warren Bridge, (1837) 11 Pet. (U. S.) 573. See also Edwards *v.* Kearzey, (1877) 96 U. S. 604, *et seq.*

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law assailed in a particular case did impair the vested right claimed.

The volume of litigation.

As may be seen by reference to the long list of authorities cited in connection with the statement of this immunity, it would be impossible to consider, in this volume, the numerous phases which the discussion of the nature and extent of the rights of the citizen under this clause has assumed. That would make a volume in itself.

The leading case.

The case which sets forth with most learning and ability the nature and extent of this particular Federal guarantee, and the one most frequently cited, is *Charles River Bridge v. Warren Bridge.*[2] It was decided in 1837, and the opinion of the court was delivered by Chief Justice Taney in one of the strongest of his many able opinions. But there were three dissents. The dissenting opinions of Mr. Justice McLean and Mr. Justice Story, the latter concurred in by Mr. Justice Thompson, are such striking, powerful presentations of opposing views that in them is found the germ of many a subsequent effort made to unsettle the principles fixed by the great decision. This case was confined, however, to a discussion of how far public grants of franchises are revocable by State legislation without violating the clause of the Constitution above referred to. It did not involve consideration of many other classes of State legislation upon which the question of the impairment of contracts has arisen.

Change of remedy.

One leading distinction, however, running through the decisions, should be briefly referred to, to wit: The prohibition does not restrain the

[2] (1837) 11 Pet. (U. S.) 420.

States from changing remedies, and a change in a remedy provided to enforce a right is not necessarily an impairment of the right itself.[3]

To a full comprehension by the practicing lawyer of the meaning of this clause and its bearing upon State legislation, a study of the authorities cited in the footnote is necessary, indeed indispensable. As there is no middle ground between this brief consideration, and one so elaborate that it would occupy unwarranted space in this general treatise, the subject is left to some other author who shall deal with it as a specialty.

Of the Right of the Citizens of Each State to All the Privileges and Immunities of Citizens in the Several States (*Right 41 above*).

In the Articles of Confederation.

This provision was in the Articles of Confederation. Indeed, it was the only direct guarantee from the United States to the individual citizen contained in that instrument.

Corporations not citizens.

In the first case decided by the Supreme Court, involving the construction of this clause, Chief Justice Marshall said that a corporation was "certainly not a citizen" in the sense that the word is used in the clause referred to.[4] And in the next case the same illustrious authority held that a citizen of the United States, residing in any State of the Union,

[3] "It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances." Von Hoffman *v.* Quincy, (1866) 4 Wall. (U. S.) 553.

[4] U. S. Bank *v.* Deveaux, (1809) 5 Cranch (U. S.) 61.

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is a citizen of that State.[5] In later cases it has been repeatedly decided that corporations are not citizens of the State of their creation within the meaning of the clause now under consideration; that they are creatures of the local law of the place of their creation, without any absolute right to recognition in other States.[6]

Legislation affecting foreign corporations.

A State statute denying jurisdiction to the State courts over a suit by a foreign corporation against a foreign corporation has been held not to violate this clause of the Constitution.[7] But when a State law made it a condition for the admission of a foreign corporation to do business in the State that the corporation so admitted would abstain from removing any suits brought against it or otherwise resorting to the federal courts, the condition was held to be void as in conflict with the Constitution of the United States. This was decided, however, rather as an abridgment of the rights of the corporation

[5] Gassies *v.* Ballon, (1832) 6 Pet. (U. S.) 761.

[6] Augusta Bank *v.* Earle, (1839) 13 Pet. (U. S.) 519; Lafayette Ins. Co. *v.* French, (1855) 18 How. (U. S.) 404; Ducat *v.* Chicago, (1870) 10 Wall. (U. S.) 410; Liverpool Ins. Co. *v.* Massachusetts, (1870) 10 Wall. (U. S.) 566; Paul *v.* Virginia, (1868) 8 Wall. (U. S.) 168; Philadelphia Fire Assoc. *v.* New York, (1886) 119 U. S. 110; Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 181; Orient Ins. Co. *v.* Daggs, (1899) 172 U. S. 561.

"A grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation, being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. . . . It must dwell in the place of its creation, and cannot migrate to another sovereignty." Paul *v.* Virginia, (1868) 8 Wall. (U. S.) 181.

[7] Anglo-American Provision Co. *v.* Davis Provision Co., (1903) 191 U. S. 373.

under Amendment XIV than as against its right as the citizen of another State.[8]

A State law admitting a foreign corporation to do business in the State on the condition that creditors who were residents of the State granting the permit should have priority in the distribution of its assets over nonresident creditors was likewise held to violate the constitutional guarantee against discrimination.[9] It was said, in one of the cases, that the only limit of the State's right to exclude foreign corporations is where they are employed by the Federal government or are strictly engaged in interstate or foreign commerce.[1]

Discriminating in occupation taxes.

A State law which imposes a tax upon resident merchants at one rate, and another tax upon non-

[8] Home Ins. Co. *v.* Morse, (1874) 20 Wall. (U. S.) 445; Doyle *v.* Continental Ins. Co., (1876) 94 U. S. 535; Barron *v.* Burnside, (1887) 121 U. S. 186.

"The Constitution of the United States declares that the judicial power of the United States shall extend to all cases in law and equity arising under that Constitution, the laws of the United States, and to the treaties made or which shall be made under their authority, . . . to controversies between a State and citizens of another State, and between citizens of different States. The jurisdiction of the Federal courts, under this clause of the Constitution, depends upon and is regulated by the laws of the United States. State legislation cannot confer jurisdiction upon the federal courts, nor can it limit or restrict the authority given by Congress in pursuance of the Constitution." Home Ins. Co. *v.* Morse, (1874) 20 Wall. (U. S.) 453.

[9] Blake *v.* McClung, (1898) 172 U. S. 239, where the court said: "Although, generally speaking, the State has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business, such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several States by the supreme law of the land."

[1] Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 181.

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residents, for the privilege of transacting the same character of business, at a higher or discriminating rate, is a violation of the provision we are discussing.[2]

Statutes assailed on double grounds.

In some of the cases which have been decided the State law has been assailed on the double ground that it discriminated against citizens of other States and was regulative of interstate commerce. The decisions rendered have in some instances held the law to be unconstitutional on the latter ground and

[2] Ward *v.* Maryland, (1870) 12 Wall. (U. S.) 419; Guy *v.* Baltimore, (1879) 100 U. S. 434; Walling *v.* Michigan, (1886) 116 U. S. 446.

"No State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired." Guy *v.* Baltimore, (1879) 100 U. S. 439.

"Grant that the States may impose discriminating taxes against the citizens of other States, and it will soon be found that the power conferred upon Congress to regulate interstate commerce is of no value, as the unrestricted power of the States to tax will prove to be more efficacious to promote inequality than any regulations which Congress can pass to preserve the equality of right contemplated by the Constitution among the citizens of the several States. Excise taxes, it is everywhere conceded, may be imposed by the States, if not in any sense discriminating; but it should not be forgotten that the people of the several States live under one common Constitution, which was ordained to establish justice, and which, with the laws of Congress, and the treaties made by the proper authority, is the supreme law of the land; and that that supreme law requires equality of burden, and forbids discrimination in State taxation when the power is applied to the citizens of the other States.

have ignored the former, although it was apparently equally tenable.[3]

The Dred Scott case.

Under the decision in the famous Dred Scott case a free negro whose ancestors were brought to this country and sold as slaves was held not to be a "citizen" in the sense that the word was used in the Constitution. Bitterly as this decision was assailed at the time it was rendered, its logic was unanswerable as the law then stood. This has been changed by the XIII, XIV, and XV Amendments, and it has been frequently said in the decisions upon those amendments that they were passed in order to reverse this ruling.

Statutes discriminating as to marital rights.

There are, however, sundry things concerning which States may legislate discriminating between residents and nonresidents. One of the earliest of these decisions was that marital rights of a special nature, bestowed by a State upon its own citizens residing within its borders, do not accrue to the nonresident widow of a deceased nonresident husband who owned property in that State. It was held that such rights were attached to the contract of marriage in cases in which the State controlled it and were not of the class of personal rights of a citizen intended by this clause of the Constitution.[4]

Inequality of burden, as well as the want of uniformity in commercial regulations, was one of the grievances of the citizens under the Confederation; and the new Constitution was adopted, among other things, to remedy those defects in the prior system." Ward *v.* Maryland, (1870) 12 Wall. (U. S.) 430.

[3] Corson *v.* Maryland, (1887) 120 U. S. 502.

[4] Conner *v.* Elliott, (1885) 18 How. (U. S.) 591.

"According to the express words and clear meaning of this clause, no privileges are secured by it, except those which belong

Taxing corporate shares.

A State tax on shares of nonresidents in a corporation of Connecticut, on a basis different from that on which residents were taxed, was, under the peculiar tax laws of Connecticut, held not to be a discrimination.[5]

Limitation of actions.

And a State law saving the statute of limitations to a resident plaintiff against an absent defendant, but allowing it to run against a nonresident plaintiff, has been held not to discriminate against the citizen of another State within the meaning of this clause. It was held to be a change of remedy and not the deprivation of a right.[6]

Cattle laws.

An act of a State legislature granting exclusive privileges for twenty-five years to maintain within a designated area a slaughter-house, landings for cattle, and yards for enclosing cattle intended for sale or slaughter, and prohibiting all others, was held to be within the police power of the State, unaffected by the Federal Constitution or its amend-

to citizenship. Rights attached by the law to contracts by reason of the place where such contracts are made or executed, wholly irrespective of the citizenship of the parties to those contracts, cannot be deemed 'privileges of a citizen,' within the meaning of the Constitution." Conner *v.* Elliott, (1855) 18 How. (U. S.) 593.

[5] Travellers' Ins. Co. *v.* Connecticut, (1902) 185 U. S. 364. See also Eldridge *v.* Trezevant, (1896) 160 U. S. 452.

In passing upon the constitutionality of tax laws, the court "can only consider the legislation that has been had, and determine whether or no its necessary operation results in an unjust discrimination between the parties charged with its burdens. It is enough that the State has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against nonresidents. . . . Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized." Travellers' Ins. Co. *v.* Connecticut, (1902) 185 U. S. 364.

[6] Chemung Canal Bank *v.* Lowery, (1876) 93 U. S. 72.

ments, and to be a regulation for the health and comfort of the people.[7] A law of the State of Iowa making persons liable for any damages accruing from their allowing cattle from Texas to run at large and spread a disease known as Texas fever was held to work no discrimination, and to be within the police powers of the State.[8] A similar law against introducing diseased live stock into Colorado was upheld.[9] In the case of *Rasmussen v. Idaho*,[1] the proclamation of the governor of Idaho forbidding the introduction from other States of sheep with scab was held to be no discrimination against other States and a legitimate exercise of the police powers of the State.

Fish and game laws.

State laws forbidding nonresidents from fishing or hunting within the limits of the State, or prescribing terms upon which they may do so, have been upheld as constitutional, on the ground that the States never surrendered to the Federal government any of their rights touching fishing or hunting; that the fish or game of the State is a part of the food supply of the citizens, in which the citizens of other States have no interest or personal rights or privileges; and that a State may control the subject in the exercise of its police power,[2] and as a thing held in trust for its own people.

[7] Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36.

[8] Kimmish *v.* Ball, (1889) 129 U. S. 217.

[9] Reid *v.* Colorado, (1902) 187 U. S. 137.

[1] (1901) 181 U. S. 198.

[2] McCready *v.* Virginia, (1876) 94 U. S. 391; Geer *v.* Connecticut, (1896) 161 U. S. 519; Manchester *v.* Massachusetts, (1891) 139 U. S. 240; Lawton *v.* Steele, (1894) 152 U. S. 133.

An appropriation by the State of "its tide waters and their beds to be used by its people as a common for taking and cultivating fish,

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Inspection of food—regulation of liquor traffic.

The question of the right of the State to inspect meat and provision and other food supplies, and her right to regulate the liquor traffic, is the subject of a number of the decisions hereinafter considered, but in those cases decided adversely to the State the decision has been placed either upon the interstate commerce clause or upon the rights asserted under the XIV Amendment, and they will be found under the discussion of the latter subject.

Of the Federal Guarantee of Extradition of Fugitives from Justice (Right 42 above).

Scope and effect of legislation.

Pursuant to this obligation the Congress has enacted statutes providing for the extradition from one State to another of fugitives from justice. These Federal statutes control the demand, and statutes have been passed in all the States providing measures in accordance with the Federal laws. In the first case of extradition presented to the Supreme Court, the prisoner was indicted in Canada and requisition was made by the Canadian government on the governor of Vermont, who undertook to deliver him. He applied for a habeas corpus on the ground that such a delivery could only be made to a foreign government on a requisition upon the United States, and that the United States would not, as had been shown by its action in another case, honor

so far as it may be done without obstructing navigation, . . . is in fact nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship." McCready *v.* Virginia, (1876) 94 U. S. 395.

the requisition because there was no treaty. The Vermont court dismissed the writ, and the Supreme Court, by a divided court, sustained the action of the State court.[3] In another case it was held to be the duty of the governor of one State, on the demand of the governor of another State, and the production of the indictment, duly certified, to deliver up a fugitive from justice; that the function of the former is merely ministerial, and that he has no right to exercise any discretionary power; that he is under moral obligation to perform the compact of the Constitution, Congress having regulated the manner of performance; but that no law of Congress could coerce a State officer to perform his duty, and a motion for a mandamus against the governor was denied.[4] And again it was held that the Federal statute demanding surrender of a fugitive from justice found in one of the States or Territories, to the State in which he stands accused, applies to Territories as well as States and embraces every offense known to the law, including misdemeanors.[5]

[3] Holmes *v.* Jennison, (1840) 14 Pet. (U. S.) 540.

[4] Kentucky *v.* Dennison, (1860) 24 How. (U. S.) 66.

[5] *Ex p.* Reggel, (1885) 114 U. S. 642.

"Looking . . . to the words of the Constitution — to the obvious policy and necessity of this provision to preserve harmony between States, and order and law within their respective borders, and to its early adoption by the colonies, and then by the confederated States, whose mutual interest it was to give each other aid and support whenever it was needed — the conclusion is irresistible, that this compact engrafted in the Constitution included, and was intended to include, every offense made punishable by the law of the State in which it was committed, and that it gives the right to the executive authority of the State to demand the fugitive from the executive authority of the State in which he is found; that the right given to 'demand' implies that it is an absolute right; and it follows that there must be a correlative obligation to deliver, without any

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Abduction of defendant from State of asylum.

In one case a man charged with crime in Kentucky fled to West Virginia. A requisition issued for him. While the governor of West Virginia was considering his extradition the man was seized in West Virginia, forcibly abducted to Kentucky, and there held for trial. He instituted proceedings seeking to have himself returned to West Virginia. The Supreme Court held that there was no mode provided by the Constitution or laws of the United States, by which Federal authority could restore him to West Virginia.[6]

Extradition on one charge, trial on another.

And a fugitive returned to a demanding State has no immunity from other indictments against him by the State from which he fled, after he is returned.[7] But the Supreme Court has said that to extradite a man on one charge and try him on another is dishonorable.[8] The governor of a State, upon whom demand is made for the surrender to another State of a citizen who is charged with being a fugitive from justice, may refuse the requisition if it be satisfactorily shown to him that the accused was not in the State at the time the alleged offense

reference to the character of the crime charged, or to the policy or laws of the State to which the fugitive has fled." Kentucky *v.* Dennison, (1860) 24 How. (U. S.) 103.

[6] Mahon *v.* Justice, (1888) 127 U. S. 700.

[7] Lascelles *v.* Georgia, (1893) 148 U. S. 537; Roberts *v.* Reilly, (1885) 116 U. S. 80; 12 Am. and Eng. Encyc. of Law (2d ed.) 606.

"It is settled by the decisions of this court that, except in the case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties or laws of the United States which exempts an offender, brought before the courts of a State for an offence against its laws, from trial and punishment, even though brought from another State by unlawful violence, or by abuse of legal process." Lascelles *v.* Georgia, (1893) 148 U. S. 543.

[8] U. S. *v.* Rauscher, (1886) 119 U. S. 407.

was committed, or since, for in that case the fact that he fled from justice is negatived.[9]

Determination of sufficiency of indictment.

From the foundation of the government and notwithstanding the absolute power of Congress to regulate the terms of surrender of fugitives, the governors of States have been disposed to show independence on this subject of honoring requisitions. In the days of slavery it was difficult to secure the surrender of fugitive slaves, and impossible to secure the surrender of persons charged in a slave State with having aided slaves to escape and having then themselves fled. The case of *Kentucky v. Dennison*[9*] is an illustration in point. In some States the executive, before honoring the requisition of the governor of the demanding State, claims the right to examine the indictment upon which the demand is based, and to determine whether it is in due form, or to decide whether it charges an offense punishable under the laws of the demanding State, which is equivalent to deciding a demurrer to the indictment; and even to hear testimony to determine the question of probable guilt or innocence. A notable instance of this is the case of a recent governor, indicted for complicity in the murder of his political rival, who, having fled first to one and then to another State, was demanded by the authorities of the State from which he fled, of the authorities of both States in which he sought asylum, but has been protected from delivery. Perhaps, in the instance cited, it was best so, but the better opinion is that if a crime is charged and demand is

[9] People *v.* Hyatt, (1902) 72 N. Y. 176, and cases cited.

[9*] (1860) 24 How. (U. S.) 103.

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made, in due form, accompanied by an exemplified copy of the indictment, the duty of the executive upon whom the demand is made is to surrender the accused to the demanding State, whether he may think him properly or improperly indicted, innocent or guilty, leaving the questions of the sufficiency of the indictment and his guilt or innocence to be determined by the lawfully constituted authorities of the demanding State upon his trial there.[1]

The Guarantee to the Citizen that Persons Held to Service or Labor in One State and Escaping to Another Shall Not be Discharged Thereby from Such Service or Labor but Shall be Delivered Up (Right 43 above).

Restriction to slavery.

This once exciting clause has, since the abolition of slavery, ceased to possess much practical importance. It may be left, with the authorities cited in connection with it, to the study of those interested in the controversies to which slavery gave rise.

Of the Federal Guarantee to the Citizen that His State Shall Have a Republican Form of Government (Right 44 above).

Dorr's Rebellion.

In the first case in which the Supreme Court was called upon to enforce this guarantee it decided that the question which of two rival governments existing in a State was the lawful government of the State was not a judicial but a political question; that is, that it was to be decided by the legislative and executive departments and not by the judiciary. The case arose out of conditions bordering upon

[1] Pearce *v.* Texas, (1894) 155 U. S. 311.

civil war in the State of Rhode Island in 1842, resulting from an attempt of certain citizens of that State to change the organic law of Rhode Island from government under a charter granted by Charles II, which it had continued as its form of government after the Revolution, to government under a new constitution framed by the people. The trouble originated in the fact that while it was alleged that a majority of the people desired a new constitution, there was no provision in the existing law for the calling of any convention. The charter government continued, notwithstanding certain people assembled and framed and attempted to put into operation a new government. One Dorr was chosen governor by the adherents of the new government, and at once came in conflict with the old régime. The dispute was popularly known as "Dorr's Rebellion," and the situation soon led to military conflict, the arrest, trial, and conviction of Dorr, and his sentence to imprisonment for life (although he was subsequently pardoned). In the excitement the Federal judiciary was appealed to, and to the appeal it gave the above reply.

Attitude of the Federal government.

The Federal executive and other departments had held intercourse with the old government and so continued to recognize it, and, although neither of the State governments could, as they were administered then, be said to be a republican government, under the decision that it was a political question, to be disposed of by Congress, the factions in Rhode Island were allowed to flounder on, and finally untangle their troubles for themselves without Federal interference. So in that instance this Federal guar-

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antee of a republican government proved to be not a very practical thing.[2]

The secession of Texas.

The next occasion upon which the Supreme Court considered this Federal guarantee was after the great Civil War. The State of Texas attempted, in 1861, to secede. Her government and her people waged war on the United States for four years. In 1865 she was overcome by force of arms, and her territory was occupied by the military forces of the United States, and her government was temporarily administered by provisional appointees of the President of the United States and afterwards by governors appointed under an act of Congress, by a military commander, Texas being a part of Military District No. 5, composed of Texas and Louisiana, pursuant to an Act of Congress of March, 1867. A State convention, assembled under the authority of the United States in 1866, passed an ordinance looking to the recovery of certain bonds alleged to belong to the State, and one J. W. Throckmorton, a gov-

[2] Luther *v.* Borden, (1849) 7 How. (U. S.) 1.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. . . . So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfil this guarantee. They might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide

ernor whom that convention had elected, authorized the bringing of the suit. Two subsequent military governors, Hamilton and Pease, further ratified this action. The bill was an original bill filed by Texas as a State in the Supreme Court, and while this condition of her statehood continued it prayed an injunction concerning certain bonds and their delivery to the State. The defense, among other things, questioned:

1. The authority of the parties named to prosecute a suit in the name of Texas.
2. The right of Texas, after her course in the Civil War, to sue as a State of the Union.

Status of seceding States — *Texas v. White.*

It fell to the lot of Chief Justice Chase to decide the status of the States which had attempted to secede, after they were conquered by the United States and before they were fully restored to their relations as States of the Union. In a great opinion the following points were decided:

1. That the term State, as used in the Constitution, most frequently expresses the combined idea of people, territory, and government; a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed.

when the contingency had happened which required the Federal government to interfere. But Congress thought otherwise, and no doubt wisely; and by the Act of February 28, 1795, . . . the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President." Luther *v.* Borden, (1849) 7 How. (U. S.) 1.

2. That the Union of these States under a common Constitution, forming a distinct and greater political unit, is that which was designated by the Constitution as the United States, and made, of the people and States composing it, one people and one country.
3. That the guarantee to every State of a republican form of government was a guarantee to the people of that State.
4. That the Union was indissoluble.
5. That the States nevertheless possessed a right of self-government, sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly or by fair implication delegated to the Union; that without the States in union there could be no such political body as the United States.
6. That the preservation and the maintenance of their governments was as much within the care of the Federal authority as was the preservation of the national government itself.
7. That the United States was an indestructible government of indestructible States.
8. That the guarantee of republican government in the Union, to the State, was as binding on the United States as the guarantee of perpetual union, and that Texas was entitled to the performance of that guarantee by the final act whereby she became a new member of the Union.

9. That her attempt at secession and all acts intended to give it effect were null.
10. That the State continued to exist as a member of the Union, notwithstanding its temporary government had been destroyed to preserve the Union.
11. That the United States, having preserved its own existence, was engaged in performing its equally sacred obligation to provide a republican form of government to the State.
12. That this was a political guarantee to be performed by the Congress.
13. That Congress was empowered to judge of the ways and means of accomplishing that result, and the provisional and temporary military governments then existing were lawful means to that end in a case in which the hostile State government had been destroyed, and until new and loyal republican State governments could be organized.
14. That it behooved the judiciary to recognize the continual existence of the seceding States as members of the Union, notwithstanding the temporary suspension of their relations to the Union by the force of the events above referred to.

No epitome of this great decision can do it justice. It is among the most luminous expositions extant of the vital questions of which it treats, and was followed thenceforth in every department of the government.[3]

[3] Texas *v.* White, (1868) 7 Wall. (U. S.) 700.

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In re Duncan.

In a later case the point was made that the form of government of a State was not republican in the sense guaranteed by the Constitution; that is to say, that certain State statutes in the frame and execution were not. The Supreme Court reiterated that the question was a political question, and that if the "form of government" existing in a State was recognized by the legislative and executive departments, the judiciary ought not to question it, and must follow the interpretations of the State laws placed on them by the highest State court.[4]

Taylor v. Beckham

In a very recent case the Supreme Court, called upon to decide upon the case of rival contestants for the office of governor of a State, declined to do so, declaring that it was preëminently a case for decision by the court of last resort in the State. When the Federal guarantee of a republican form of government, and the XIV Amendment were invoked, it dismissed the contention by declaring that the enforcement of that guarantee was intrusted to the political department of the government, and that the powers of the judiciary concerning it were not so enlarged by anything in the XIV Amendment as to give the court power to review the judgment of a State court of last resort on a question of State elections.[5]

Enforcement left to Congress and the executive.

From the foregoing, which embrace all the utterances of the Supreme Court concerning its powers under the guarantee clause, it will be seen that the citizen has little or nothing to hope for, in the way of its enforcement, from the Federal judiciary. In-

[4] *In re* Duncan, (1891) 139 U. S. 449.

[5] Taylor *v.* Beckham, (1900) 178 U. S. 548.

deed, judging by the recent utterances of that court, not only in this regard, but on the subject of extradition,[6] and in numerous cases where attempts have been made to secure its aid against gross frauds on the suffrage,[7] it would seem to be willing to surrender its existence and power as a coördinate department of the Federal government, and gladly abandon to Congress and the executive all efforts to enforce the law, except in matters not political.

We come now to consider those rights, privileges, and immunities of the citizen guaranteed by the early amendments to the Constitution.

The Immunity of the Citizen Against Any Law of Congress Respecting an Establishment of Religion or Prohibiting the Free Exercise Thereof. (Amendment I.)

Provision not inimical to religion.

Either by the bill of rights, the constitution, or the law, of every State of the Union, a similar guarantee is given to its citizens, concerning State laws. This does not mean that the people either of the Nation or of the State hold religion in contempt or desire to belittle it. On the contrary, the oldest of the bills of rights contains reverential references to religion or the duty which we owe to our Maker. The Christian religion was judicially declared to be a part of the common law of Pennsylvania.[8] But the English Established Church had become exceedingly obnoxious to the colonists, and

[6] Kentucky *v.* Dennison, (1860) 24 How. (U. S.) 103.

[7] Williams *v.* Mississippi, (1898) 170 U. S. 213; Green *v.* Mills, (C. C. A. 1895) 69 Fed. Rep. 852, 159 U. S. 651; Giles *v.* Harris, (1903) 189 U. S. 486.

[8] Vidal *v.* Philadelphia, (1844) 2 How. (U. S.) 198.

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their ideas of religious liberty had been imbibed from Dutch and Lutheran examples, and stimulated by what they regarded as oppressions of the regularly established Church. Hence the prohibition above set forth.[9]

Effect on church property.

The first case arising under this clause involved the effect of the constitutions, national and State, and laws enacted thereunder, upon property of the Episcopal Church in Virginia. The case arose touching certain church property in Alexandria, which city was at that time in the District of Columbia. The court held that the religious establishment of England was adopted, so far as applicable, in the colony of Virginia, and that the freehold of church lands was in the parson; that legislative grants were irrevocable; that the Act of Virginia of 1776, confirming to the Episcopal Church, as successor of the Established Church, its rights to lands, was not contrary to the State constitution and did not infringe any rights, civil, political, or religious, under the State constitution; that later acts seeking to divest the Episcopal Church of Virginia of property ac-

[9] For an interesting account of the reasons leading to the adoption of this provision and the manner of its adoption, see Reynolds *v.* U. S., (1878) 98 U. S. 162–164.

"The oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society." Davis *v.* Beason, (1890) 133 U. S. 342.

quired previous to the Revolution were null, etc.[1] By this decision, and others similar in other States, the Episcopal Church retained much property in the older colonies.

Offenses against morality and decency.

The Supreme Court has held that the prohibition above does not make good the plea of a person accused of an offense against morality and decency, that he has acted pursuant to the tenets of his religious belief, which were those of a Mormon.[2] It was said, "Religious freedom is guaranteed everywhere throughout the United States so far as congressional interference is concerned." Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were violative of social duties or subversive of good order. "Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people." The law punishing polygamy was upheld as intended to prevent a pernicious practice, no matter what was the belief of the party engaging in it. The opinion delivered by Chief Justice Waite is both interesting and instructive and equally applicable to other religious immoralities than polygamy.

In a later case the Supreme Court declared that bigamy and polygamy are crimes by the laws of the

[1] Terrett *v.* Taylor, (1815) 9 Cranch (U. S.) 43.

[2] Reynolds *v.* U. S., (1878) 98 U. S. 145.

By the provision against any law of Congress respecting an establishment of religion, or prohibiting the very exercise thereof, or abridging the freedom of speech or of the press, "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties, or subversive of good order." Reynolds *v.* U. S., (1878) 98 U. S. 164.

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United States, by the laws of Idaho, and by the laws of all civilized and Christian countries; and to call their advocacy a tenet of religion is to offend the common sense of mankind; that a crime is none the less such, nor less odious, because sanctioned by what any particular sect may designate as religion; and that the first amendment to the Constitution was never intended as a protection from punishment for acts inimical to the peace, good order, and morals of society.[3]

Sectarian control of government hospital.

In a case recently decided, it was held that placing an isolated hospital building built by the government in charge of another hospital, which was under the control of Sisters of the Roman Catholic Church, was not obnoxious to the constitutional prohibition against laws respecting an establishment of religion.[4]

Of the Right of the Citizen to Free Speech. (*Amendment I.*)

Limitations of the right.

This right is also guaranteed to their citizens by all the States. Of it, it is sufficient to say that it is a right to be confined within the bounds of decency and morality, and gives no immunity from arrest and punishment for treasonable, seditious, and inflammatory appeals. In time of war numerous arrests have been made by the authority of military commissions, and citizens have been actually deported by presidential orders without trial by jury, and after vainly seeking redress under habeas corpus

[3] Davis *v.* Beason, (1890) 133 U. S. 333; Church of Jesus Christ *v.* U. S., (1890) 136 U. S. 1.

[4] Bradfield *v.* Roberts, (1899) 175 U. S. 291.

proceedings.[5] And in time of peace, under Federal statutes authorizing the deportation of anarchists, persons have, from time to time, been indicted, arrested, and punished or deported, for seditious, anarchistic, and nihilistic utterances and publications. The justification for such action is that while the constitutions, Federal and State, guarantee freedom of speech and of the press, the persons so speaking or publishing are answerable to the public authorities for their acts in the interests of good citizenship, morality, and decency.[6]

Of the Freedom of the Press. (*Amendment I.*)

General considerations.

The freedom of the press has been described as one of the great bulwarks of liberty. Unquestionably the suppression of fair discussion of public measures in the press was, under the system against which the colonists rebelled, one of the most odious forms of tyranny. On the other hand, those who, in that day, were so ardent for the absolute liberty

[5] *Ex p.* Vallandigham, (1863) 1 Wall. (U. S.) 243.

[6] U. S. *v.* Williams, (1904) 194 U. S. 279, where the court said: "We are not to be understood as depreciating the vital importance of freedom of speech and of the press, or as suggesting limitations on the spirit of liberty, in itself unconquerable, but this case does not involve those considerations. The flaming brand which guards the realm where no human government is needed still bars the entrance; and as long as human governments endure they cannot be denied the power of self-preservation."

"In incorporating these principles (the first ten amendments to the Constitution) into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus the freedom of speech and of the press (Article 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation." Robertson *v.* Baldwin, (1897) 165 U. S. 281.

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of the press could not have foreseen the immense increase in public and private printed matter which was to occur; the almost unlimited power for good or evil which the press was to possess; the irreparable nature of the injuries which it is often able to inflict; or the irresponsible hands into which so large a portion of the press of our day was, in time, to pass.[7]

Injunction or action for damages.

The State constitutions and statutes which guarantee the freedom of the press, for the most part, couple with that guarantee the condition that the persons so printing shall be answerable in damages for any abuse of the privilege. But the privilege itself is regarded as of such dignity and sanctity that the courts of sundry States have held that an injunction will not lie to restrain the publication of an alleged libel, and the only redress of a party libeled is to bring an action for damages after the fact or prosecute the offender criminally.[8]

Rights Guaranteed by Amendments II–VIII, XI, and XII.

Of the other rights guaranteed by the amendments from II to VIII we shall not speak in detail,

[7] "It is well understood, and received as a commentary on this provision for the liberty of the press, that it was intended to prevent all such previous restraints upon publications as had been practised by other governments, and in early times here, to stifle the efforts of patriots towards enlightening their fellow subjects upon their rights and the duties of rulers. The liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its abuse; like the right to keep fire arms, which does not protect him who uses them for annoyance or destruction." *Per* Parker, C. J., in Com. *v.* Blanding, (1825) 3 Pick. (Mass.) 314.

[8] Marlin Fire Arms Co. *v.* Shields, (1902) 171 N. Y. 384, and cases cited.

because their nature, extent, and full interpretation will be found sufficiently considered in the authorities cited in connection with their statement.[9] Nor do the amendments numbered XI and XII bear directly on our subject.

Having now come to the war amendments, let us proceed to consider them in their order.

[9] Ohio *v.* Dollison, (1904) 194 U. S. 445.

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PRIVILEGES AND IMMUNITIES UNDER THE WAR AMENDMENTS.

The Thirteenth Amendment.

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Purpose and effect in general.

THIS amendment simply abolished slavery. Beyond the declaration that neither slavery nor involuntary servitude, etc., should exist within the United States or any place subject to their jurisdiction, it enacted nothing.[1] It did not even affect the validity of a note given for a slave when slavery was lawful.[2] The main purpose of the amendment was to abolish African slavery, but it equally forbids Mexican peonage or Chinese cooly trade, amounting to slavery, and the use of the word

[1] "This amendment, as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect it abolished slavery and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit. And such legislation may be primary and direct in its character; for the amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." Civil Rights Cases, (1883) 109 U. S. 20. See also Peonage Cases, (1903) 123 Fed. Rep. 671; U. S. *v.* McClellan, (1904) 127 Fed. Rep. 971.

[2] White *v.* Hart, (1871) 13 Wall. (U. S.) 646; Osborn *v.* Nicholson, (1871) 13 Wall. (U. S.) 654.

There is nothing in the language of the amendment which in the slightest degree warrants the inference that those who framed or those who adopted it intended that it should effect the destruction

"servitude" prohibits all forms of involuntary slavery of whatever class.[3]

Equal accommodations for races — sailors' contracts.

The XIII Amendment was, however, held not to authorize the passage by Congress of laws requiring equal accommodation in inns, public conveyances, and places of amusement, for it was said that the denial of such equal accommodations imposes no badge of slavery or involuntary servitude upon either race.[4] Nor does it place any restraint upon the States from passing laws requiring railway companies carrying passengers in their coaches, within the State, to provide equal but separate accommodations for the white and for the colored race, and that the races be kept separate on railroads and steam-

of rights legally and completely vested at the time of its adoption. Osborn *v.* Nicholson, (1871) 13 Wall. (U. S.) 662; White *v.* Hart, (1871) 13 Wall. (U. S.) 646.

[3] "Undoubtedly, while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese cooly labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply though the party interested may not be of African descent." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 71. See also Plessy *v.* Ferguson, (1896) 163 U. S. 542; U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 677.

[4] Civil Rights Cases, (1883) 109 U. S. 3.

"A statute which implies merely a legal distinction between the white and colored races — a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color — has no tendency to destroy the legal equality of the two races, or reëstablish a state of involuntary servitude. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior

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boats; or from separating the races in schools.[5] Nor does it authorize federal courts to annul sailors' contracts on the plea that they are contracts for involuntary servitude; for a sailor's contract necessarily involves, to a certain extent, surrender of his personal liberty, during the life of the contract, and was not in the contemplation of this amendment.[6]

Slavery alone affected.

And this is all that was enacted by the XIII Amendment, and all that has ever been decided concerning it by the court of last resort intrusted with its interpretation. It *affected* no right theretofore possessed by any State in the Union, except the right to establish or recognize slavery or involuntary servitude. It *effected* no change in the relations of the Union and the States composing it to each other, or in the organic structure of the Nation or the States.

Of the Rights of Citizens Under the Fourteenth Amendment.

Early view as to scope.

When the XIII, XIV, and XV Amendments first came up for interpretation before the Supreme Court of the United States in the famous

to the other socially, the Constitution of the United States cannot put them upon the same plane." Plessy *v.* Ferguson, (1896) 163 U. S. 543, 551.

[5] Louisville, etc., R. Co. *v.* Mississippi, (1890) 133 U. S. 587; Plessy *v.* Ferguson, (1896) 163 U. S. 537; Cumming *v.* Board of Education, (1899) 175 U. S. 528; Chesapeake, etc., R. Co. *v.* Kentucky, (1900) 179 U. S. 387.

[6] Robertson *v.* Baldwin, (1897) 165 U. S. 275.

"The amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional, such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards. The amendment, how-

Slaughter-House Cases, Mr. Justice Swayne said of them, "Fairly construed, they may be said to rise to the dignity of a new Magna Charta." In the light of subsequent decisions their enactments must be regarded as of much narrower scope.

Right of legislation conferred.

The XIV Amendment is broader in language than the XIII, yet no broader than the XIII in conferring any power upon the Federal government to legislate upon its own initiative. It declared a new law of citizenship, but the only power of legislation conferred by it upon Congress was power to enact restrictive legislation against any State action which might be taken contrary to the amendment itself.

The language of the amendment is in part:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

No State shall make or enforce

(a) Any law which shall abridge the privileges or immunities of citizens of the United States.

(b) Nor shall any State deprive any person of life, liberty, or property without due process of law.

ever, makes no distinction between a public and a private service. To say that persons engaged in a public service are not within the amendment is to admit that there are exceptions to its general language, and the further question is at once presented, where shall the line be drawn? We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview." Robertson *v.* Baldwin, (1897) 165 U. S. 282.

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(c) Nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Enactments prolific of litigation.

Congress has attempted to pass many acts enforcing the provisions of that article. Its enactments have given rise to an amount of litigation unprecedented in the history of our Constitution. Not even the commerce clause of the Constitution, or the contract clause, has proved as fertile of controversies as the interpretation of this amendment, and laws enacted by Congress, under the supposed authority of this amendment, have more frequently been challenged successfully, and rights asserted under it have been less frequently recognized, than under any other provision of the Constitution.

Old and new principles of citizenship.

The declaration contained in the amendment that citizens of the United States shall be deemed citizens of the State wherein they reside is merely a reiteration of the law as it existed before the amendment and as it had been announced by Chief Justice Marshall in *Gassies v. Ballon*,[7] where it is said: "A citizen of the United States, residing in any State of the Union, is a citizen of that State." The declaration that all persons *born in* the United States and subject to the jurisdiction thereof are citizens of the United States was the announcement of a new law of Federal citizenship, carrying with it a new law of State citizenship and altering, as it was intended to alter, the rule of citizenship established

[7] (1832) 6 Pet. (U. S.) 761.

by the decision of the Supreme Court in the case of *Dred Scott v. Sandford.*[8] To that extent the amendment worked a radical change.[8*]

The second clause.

The next clause requires a restatement of its provisions, because nearly all the litigation which has arisen upon the XIV Amendment has grown out of the prohibitions of this clause. The language is: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Provisions directed against State legislation.

This language is plain enough. It cannot be tortured into anything but a prohibition against the enactment by any State of any law abridging the privileges or immunities of any citizen of the United States, or depriving any person of life, liberty, or property without due process of law, or denying to any person within its jurisdiction the equal protection of the laws. It relates to the States altogether. It does not require them to enact any law. It simply forbids them from enacting the laws described as obnoxious. It certainly does not confer upon

[8] (1856) 19 How. (U. S.) 398.

[8*] Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36; Strauder *v.* West Virginia, (1879) 100 U. S. 306; Elk *v.* Wilkins, (1884) 112 U. S. 101; U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 676; Maxwell *v.* Dow, (1900) 176 U. S. 593.

"Enough appears in the language employed in those provisions [the Civil Rights Act and the Fourteenth Amendment to the Federal Constitution] to show that their principal object was to confer citizenship, and the rights which belong to citizens as such, upon the colored people, and in that manner to abrogate the rule previously

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the Federal government any power to enact any kind of laws except laws enforcing this prohibition against the States. It adds nothing to and takes nothing away from the right of one citizen against another, whether he be a citizen of the United States or a citizen of the State. It forbids States from encroaching upon existing rights, but, however it may have intended, it is equally clear that it does not forbid individuals from encroaching upon those rights. The power conferred upon Congress is to enforce, by "appropriate legislation," the provisions of the article. The provisions of the article were directed solely against the States. The power of Congress derived from the amendments must therefore be confined to the power to legislate against the States to enforce those provisions.[9]

The Enforcement Act.

The Supreme Court significantly pointed out this limited power of Congress under the amendment when, in the *Slaughter-House Cases,* it declared that the protection given by the amendment was "from

adopted by this court in the Dred Scott case." *Per* Mr. Justice Clifford in Hall *v.* De Cuir, (1877) 95 U. S. 509.

"The distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 73.

[9] "Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those

the hostile legislation of the States." This was in 1872. But Congress had already passed an act, called the Enforcement Act, in which it had undertaken to legislate against individuals for conspiring or acting singly against citizens for the purpose of abridging their privileges or immunities and depriving them of life, liberty, or property, or preventing their enjoyment of the equal protection of the laws, under these constitutional amendments. Certain acts violative of the rights of citizens, as defined by the XIV and XV Amendments, committed by individuals either singly or in conspiracy with others, were declared to be in violation of Federal law, and penalties were denounced aganist the perpetrators, and under these acts arrests were made and prosecutions had.

The Civil Rights Bill.

Congress also passed an act known as the Civil Rights Bill, by which it undertook to require innkeepers, carriers, and keepers of places of public amusement not to discriminate against any classes of citizens in the accommodations which they supplied, and to give to citizens who were denied these equal accommodations right of action and damages for such denial. The defendants in all these cases, criminal and civil, challenged the power of Congress to pass the laws under which they were indicted or sued.

rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect: and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect." Civil Rights Cases, (1883) 109 U. S. 11. See also U. S. *v.* Cruikshank, (1875) 92 U. S. 542; Virginia *v.* Rives, (1879) 100 U. S. 313; *Ex p.* Virginia, (1879) 104 U. S. 339; Plessy *v.* Ferguson, (1896) 163 U. S. 537.

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Early cases under the Enforcement Act.

Two criminal cases, involving this defense, were decided by the Supreme Court in 1875. One was the case of *United States v. Reese,* arising under the clause of the Enforcement Act which undertook to punish an individual for seeking to deprive a citizen of his rights under the XV Amendment.[1] The other was the case of *United States v. Cruikshank,*[2] arising under the clause of the Enforcement Act which undertook to punish an individual for depriving a citizen of his rights under the XIV Amendment.

Purport of decisions.

In the case of Reese it was declared that the XV Amendment conferred no right to vote; that it invested United States citizens with the right of exemption from discrimination in the exercise of suffrage on account of race, color, or previous condition; that the power of Congress to legislate at all concerning voting at State elections rested on the XV Amendment and could be exercised only by providing punishment when the wrongful refusal was because of race, color, or previous condition. In the Cruikshank case the court said: "The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if it is within its power." But the court further proceeded to say that this duty was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power

[1] U. S. *v.* Reese, (1875) 92 U. S. 215.
[2] U. S. *v.* Cruikshank, (1875) 92 U. S. 542.

of the national government is limited to the enforcement of that guarantee. The court, however, found technical difficulties in the indictment which enabled it to set aside the conviction without going further. It was plain to see that the Supreme Court doubted the power of Congress to enact laws directed against individuals for violating the rights of citizens guaranteed against State legislation by the XIV and XV Amendments.

Later cases — *U. S. v. Harris.*

In the case of *U. S. v. Harris,*[3] the Supreme Court declared the Enforcement Act void in the following language: "When an Act of Congress is directed exclusively against the action of private persons, without reference to the laws of the State, or their administration by her officers, it is not warranted by any clause in this amendment," and this language has been reiterated by the court on many occasions.[4]

— *In re Kemmler.*

In the case *In re Kemmler,*[4*] the Supreme Court said: "The XIV Amendment did not radically change the whole theory of the relations of the State and Federal government to each other and of both governments to the people. . . . Protection of life, liberty, and property rests primarily with the States;" and the opinion goes on to declare that

[3] (1882) 106 U. S. 640.

[4] Baldwin *v.* Frank, (1887) 120 U. S. 684; Powell *v.* Pennsylvania, (1888) 127 U. S. 685; *In re* Kemmler, (1890) 136 U. S. 448; *In re* Rahrer, (1891) 140 U. S. 554; McPherson *v.* Blacker, (1892) 146 U. S. 39; Mobile, etc., R. Co. *v.* Tennessee, (1894) 153 U. S. 506; Scott *v.* McNeal, (1894) 154 U. S. 34, 45; Chicago, etc., R. Co. *v.* Chicago, (1897) 166 U. S. 226, 233; Louisville, etc., R. Co. *v.* Kentucky, (1902) 183 U. S. 511; Chadwick *v.* Kelley, (1903) 187 U. S. 540; Missouri *v.* Dockery, (1903) 191 U. S. 170.

[4*] (1890) 136 U. S. 448.

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the amendment guarantees only that the State shall not encroach upon the fundamental rights of her citizens or discriminate between them. And when in 1883 the measure of Congress known as the Civil Rights Bill came up for adjudication it was declared unconstitutional.[5] In that case it was held that the XIV Amendment does not justify establishing a code of municipal law regulative of all private rights between man and man in society, or make Congress take the place of State legislatures, and that the legislation which Congress was authorized to adopt was not general legislation upon the rights of citizens, but corrective legislation necessary to counteract State legislation prohibited by the amendment. "Individual invasion of individual rights is not the subject matter of the amendment," was the language used.[6]

— *James v. Bowman.*

The last and one of the most emphatic expressions of the Supreme Court against the power of Congress to enact a statute punishing purely individual action, as an appropriate exercise of power conferred by either the XIV or XV Amendments

[5] Civil Rights Cases, (1883) 109 U. S. 11.

[6] "The prohibitions of the amendment are against State laws and acts done under State authority. Of course, legislation may, and should be, provided in advance to meet the exigency when it arises; but it should be adopted to the mischief and wrong which the amendment was intended to provide against; and that is, State laws, or State action of some kind, adverse to the rights of the citizen secured by the amendment. Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them." Civil Rights Cases, (1883) 109 U. S. 13.

will be found in a case decided in 1903.[7] In that case Bowman was indicted under Section 5507 of the Revised Statutes, which was a part of the same Act under which Reese and Cruikshank were indicted. The Act attempted to punish by fine and imprisonment every person who should prevent, hinder, control, or intimidate in the exercise of the right of suffrage, by certain means described, any one to whom that right is guaranteed by the XV Amendment. The court held that the Act was beyond the power of Congress, and discharged the prisoner on a writ of habeas corpus. It reviewed the authorities above referred to, and declared that a Federal statute which purported to punish purely individual action in the particulars named was unconstitutional.

Legislation against State action alone competent.

So that, at the present time, it may be truly said that the statutes, both of criminal and of civil nature, which the Congress has attempted to enact, directed against individuals, and purporting to punish them or subject them to damages for violating the rights of citizens under the XIV and XV Amendments, have been nullified by the decisions of the Supreme Court. But while the power granted to the courts by the amendments has been thus restricted by interpretation, the power to legislate against State action has been sustained, and, in sundry instances, State action has been nullified.

Discrimination against negroes on juries.

In the first group of cases, decided by the Supreme Court in 1879, the following decisions illustrate what the amendment did effect. The law of West Virginia which singled out and denied to col-

[7] James *v.* Bowman, (1903) 190 U. S. 127.

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ored citizens the right and privilege of participating in the administration of the laws by serving on juries, because of their color, was held to be void for the discrimination.[7*] In another case it appeared that the jury law of Virginia did not forbid the summoning of negroes to act on the panel, and that if there were none on the jury which tried the accused, it was either by chance or by the negligence or wilful misconduct of a subordinate officer. In that case it was held that this did not constitute a denial by the State.[8]

Ex p. Virginia.

In the third case which came up from Virginia,[8*] where the jury law was as stated above, the court refused to grant a writ of habeas corpus in favor of a judge who had been indicted for refusing to summon negroes on the jury. His release had been demanded by the State. It is difficult to see how the ruling in this case can be justified, for the Supreme Court had, at the same term, said that the XIV Amendment was directed at State action, and had declared in the Reese and Cruikshank cases, in effect, that Federal legislation against individuals was not contemplated or authorized by the XIV or XV Amendments; and in an opinion delivered on the same day it declared that if an executive or a judicial officer in Virginia exercised unwarranted power or did unauthorized acts, prejudicial to the rights of a citizen of the United States, the remedy was by appeal. It had allowed an appeal and had granted relief in a similar case in West Virginia; and sub-

7* Strauder *v.* West Virginia, (1879) 100 U. S. 303.
8 Virginia *v.* Rives, (1879) 100 U. S. 313.
8* (1879) *Ex p.* Virginia, 100 U. S. 339.

sequently, in the case of *U. S. v. Harris,*[9] in the *Civil Rights Cases,*[9*] in *Baldwin v. Frank,*[1] and in *James v. Bowman,*[1*] it nullified the Enforcement Act and the Civil Rights Bill on the ground that individual invasion of individual rights was not the subject matter of the amendment.

It is impossible to reconcile the decision in *Ex p. Virginia* with the others. Perhaps the court did not at that time understand as fully as it came to understand later the real scope of the amendments.

Virginia v. Rives and *Ex p. Virginia* compared.

As they stand, the two cases of *Virginia v. Rives* and *Ex p. Virginia* present an amusing line of judicial demarcation. In *Virginia v. Rives,* the misconduct of a sheriff in the method of summoning a jury was declared not to be the action of the State and to be remediable on appeal. In the case of *Ex p. Virginia,* decided the same day, the misconduct of a judge in not summoning a proper jury was held to be the action of the State, remediable by the indictment of the judge, although the State had done no wrong.[2] The only legal principle to be deduced

[9] (1882) 106 U. S. 640. [1] (1887) 120 U. S. 684.

[9*] (1883) 109 U. S. 3. [1*] (1903) 190 U. S. 127.

[2] In the Civil Rights Cases, (1883) 109 U. S. 3, the case of *Ex p.* Virginia, (1879) 100 U. S. 339, is distinguished by the Supreme Court in the following language: "In the Virginia case, the State, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the State actually laid down any such rule of disqualification or not, the State, through its officer, enforced such a rule; and it is against such State action, through its officers and agents, that the last clause of the section is directed. This aspect of the law was deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering."

"The prohibitions of the amendment refer to all the instrumen-

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from the two decisions is that the boundary line between an officer who is the State and an officer who is not the State lies somewhere between a sheriff and a judge.

State action discriminating between citizens has been frequently nullified by Federal decisions since. In most cases the discrimination was in regard to the constitution of juries.[2*] These cases will be considered in discussing the decisions under the clauses of the amendments to which they refer.

Volume of decisions construing the XIV Amendment.

Having now discussed the general features of the first and fifth sections of the XIV Amendment, we come to a consideration of the decisions rendered upon it by the Supreme Court of the United States during the forty years since its passage. Three hundred cases, involving its construction, have been decided by that court, scrutinizing it from nearly every point of view in which it may possibly be considered, and we need cite no other authority on the questions, because the decisions of the Supreme Court are the supreme law of the land, anything in

talities of the State, to its legislative, executive, and judicial authorities; and therefore whoever, by virtue of public position under a State government, deprives another of any right protected by that amendment against deprivation by the State 'violates the constitutional inhibition; and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the State has clothed one of its agents with power to annul or evade it.'" Chicago, etc., R. Co. *v.* Chicago, (1897) 166 U. S. 233.

2* Missouri *v.* Lewis, (1879) 101 U. S. 22; Neal *v.* Delaware, (1880) 103 U. S. 370; Carter *v.* Texas, (1900) 177 U. S. 442; Rogers *v.* Alabama, (1904) 192 U. S. 226; Tarrance *v.* Florida, (1903) 188 U. S. 519.

conflict with them in inferior courts, Federal or State, to the contrary notwithstanding.[3]

Grounds of relief.

After laborious effort, it has been found impossible to separate the decisions under the three headings — cases in which it was claimed that the rights and privileges of the complainant were abridged; cases in which it was claimed that the complainant had been deprived of life, liberty, or property without due process of law; and cases in which it was claimed that the citizen had been denied the equal protection of the law — for in almost every instance the right to the relief asked was placed on all three grounds. Where the decision was adverse relief was of course denied upon all three of the grounds specified, but where relief was granted it was sometimes upon one ground, sometimes upon two, sometimes upon all three, and in some cases the court failed to specify upon which of the grounds the decision rested.

Results of litigation.

The student interested in the further pursuit of this inquiry may easily satisfy himself, for, surprising as it may be, out of the three hundred cases decided, only about thirty decisions have sustained the right or claim asserted under the XIV Amendment. These favorable decisions relate to discriminations against negroes in State laws or proceedings relating to the constitution of juries; to discriminations against Chinamen; to discriminating State laws concerning taxation, assessment, rates, or regulation of corporations; to discriminations in State

[3] The decisions of the United States Supreme Court under the XIV Amendment are listed in the order of their rendition in the Appendix A at the close of this volume.

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procedure; and to a few particular rights.[4] This is the pitiful array of results from forty years of litigation upon amendments which, at the time of their enactment, were claimed to revolutionize the relations of the Nation and the States.

Instructiveness of cases rejecting claims.

In the great mass of rejected claims will be found the full interpretation placed by the court upon these amendments. A list of authorities is hereto appended showing what has been claimed under the clause which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Particular rights established.

Out of all the cases decided by the Supreme Court in which the abridgment of rights has been asserted, the claim has been sustained in but a few cases, and of the cases favorably decided seven relate to the

[4] The following are the only cases decided by the Supreme Court of the United States sustaining claims set up under the XIII, XIV, and XV Amendments:

Discrimination on juries against negroes: Strauder *v.* West Virginia, (1879) 100 U. S. 303; *Ex p.* Virginia, (1879) 100 U. S. 339; Missouri *v.* Lewis, (1879) 101 U. S. 22; Neal *v.* Delaware, (1880) 103 U. S. 370; Carter *v.* Texas, (1900) 177 U. S. 442; Rogers *v.* Alabama, (1904) 192 U. S. 226; Tarrance *v.* Florida, (1903) 188 U. S. 519.

Discriminating against Chinamen: Yick Wo *v.* Hopkins, (1886) 118 U. S. 356.

Discriminating State laws of taxation, assessment, rates, or regulations: Santa Clara County *v.* Southern Pac. R. Co., (1886) 118 U. S. 394; California *v.* Central Pac. R. Co., (1888) 127 U. S. 40; Chicago, etc., R. Co., *v.* Minnesota, (1890) 134 U. S. 418; Minneapolis Eastern R. Co. *v.* Minnesota, (1890) 134 U. S. 467; Reagan *v.* Farmers' L. & T. Co., (1894) 154 U. S. 362; Missouri Pac. R. Co. *v.* Nebraska, (1896) 164 U. S. 403; Covington, etc., Turnpike Road Co. *v.* Sandford, (1896) 164 U. S. 578; Gulf, etc., R. Co. *v.* Ellis, (1897) 165 U. S. 150; Smyth *v.* Ames, (1898) 169 U. S. 466; Norwood *v.* Baker, (1898) 172 U. S. 269; Dewey *v.*

rights of negroes in the constitution of juries. The rights established in other cases were: The right of a lawyer to practice law; the right of a Chinaman to conduct a laundry without discrimination; the right of railroads and other corporations to equal protection against discriminating State taxes or other requirements, and the right of a litigant to have due notice of a suit. Yet the whole range of the rights of citizens has been traversed to attain this result.

Functions of amendments generally.

We have already had occasion to point out that, in the earliest construction placed upon these amendments, it was declared that their main purpose was to give definitions of citizenship of the United States and of the States and to protect the newly enfranchised race against discriminating legislation by the States. At the risk of endless reiteration, we must again recur to the language of the court in the *Slaughter-House Cases,* declaring that the amendments did not bring within the power of Congress the entire domain of civil rights theretofore belonging exclusively to the States, or transfer the security and protection of all civil rights from the States to

Des Moines, (1899) 173 U. S. 193; Lake Shore, etc., R. Co. *v.* Smith, (1899) 173 U. S. 684 (selling 1,000-mile tickets); Cotting *v.* Kansas City Stock Yards Co., (1901) 183 U. S. 79; Louisville, etc., Ferry Co. *v.* Kentucky, (1903) 188 U. S. 385.

Discrimination in State procedure: Prout *v.* Starr, (1903) 188 U. S. 537; Roller *v.* Holly, (1900) 176 U. S. 398; Smyth *v.* Ames, (1898) 169 U. S. 466.

No due process: Scott *v.* McNeal, (1894) 154 U. S. 34 (man supposed to be dead; was alive).

Particular rights: Royall *v.* Virginia, (1886) 116 U. S. 572 (abridging right to practice profession); Barron *v.* Burnside, (1887) 121 U. S. 186; Allgeyer *v.* Louisiana, (1897) 165 U. S. 579 (abridging right of contract); Blake *v.* McClung, (1898) 172 U. S. 239 (discrimination between citizens of States).

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the Federal government. Their whole function was to bestow on Congress power to protect United States citizens from hostile legislation by the States.

Basic principles of decisions.

With this as the keynote we come to a consideration of the decisions above referred to. The States have been held to possess very large powers of legislation, subject only to the condition that they shall not abridge the privileges and immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law. The basic principle on which all these decisions rest is that prior to the amendments, the control of all these subjects resided in the States; that the amendments do not justify establishing a Federal code of municipal law regulative of all private rights between man and man in society, or make Congress take the place of State legislatures; that the legislation which Congress is authorized to enact is not general legislation upon the rights of citizens, but corrective legislation on the States, such legislation as may be necessary to counteract State legislation prohibited by the amendments; and that, subject to this restriction, the power of the States to legislate on all these subjects is as unqualified as it was before the amendments.[5]

[5] "The Fourteenth Amendment did not radically change the whole theory of the relations of the State and Federal governments to each other, and of both governments to the people. The same person may be at the same time a citizen of the United States and a citizen of a State. Protection to life, liberty, and property rests primarily with the States, and the amendment furnishes an additional guaranty against any encroachment by the States upon those fundamental rights which belong to citizenship, and which the State governments were created to secure. The privileges and immunities of citizens of the United States, as distinguished from

All the opinions rendered deal with this general idea, and we shall proceed to consider in detail the decisions under the following heads:

1. Of the Regulation of Ordinary Business Pursuits by the States.

a. To establish slaughter-houses.[6]

The Slaughter-House Cases.

The opinion delivered in the *Slaughter-House Cases* is perhaps the most thorough and exhaustive discussion to be found of the reserved police powers of the State in the Union. Further citations from it are unnecessary in view of what has preceded.

b. To control the regulation of laundries.[7]

Limitation of police power over laundries.

In the cases of *Barbier v. Connolley* and *Soon Hing v. Crowley,* cited below, it was declared that the XIV Amendment did not impair the police powers of the States and that they might prohibit laundries within certain limits between certain hours; but, in the later case of *Yick Wo v. Hopkins,* this police power was limited by the requirements that such laws, and indeed any laws regulating the conduct of business, should not by their terms or in their administration discriminate between classes of people engaged in the business. Yick Wo was a China-

the privileges and immunities of citizens of the States, are indeed protected by it; but those are privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the Constitution of the United States." *In re* Kemmler, (1890) 136 U. S. 448; Maxwell *v.* Dow, (1900) 176 U. S. 593. See also U. S. *v.* Cruikshank, (1875) 92 U. S. 554; Mobile, etc., R. Co. *v.* Tennessee, (1894) 153 U. S. 506; Giozza *v.* Tiernan, (1893) 148 U. S. 662.

[6] Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36.

[7] Barbier *v.* Connolly, (1885) 113 U. S. 27; Soon Hing *v.* Crowley, (1885) 113 U. S. 703; Yick Wo *v.* Hopkins, (1886) 118 U. S. 356.

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man in San Francisco, and an ordinance of the city, either by its terms or in its administration, discriminated against Chinese. That was held to deny to a class the equal protection of the law in violation of the amendment.

c. Regulation of liquor traffic.[8]

State powers over liquor traffic — interstate commerce.

The cases relating to the control of liquor traffic by the States are numerous. They are unanimous that the right to traffic in intoxicating drinks is not a privilege or immunity which the XIV Amendment forbids a State from abridging unless the law so operates as to amount to a deprivation of property without compensation or violates the provisions against interstate commerce. In the *License Cases* Mr. Justice Greer said: "Police power which is exclusively in the States is alone competent to the correction of these great evils," and in the case of *Foster v. Kansas* it was said that the constitutional power of the States to prohibit the manufacture and sale of intoxicating liquors is no longer an open question. The States have the power to regulate and even to prohibit the sale of liquors; but a number of cases will be found, arising under the inter-

[8] License Cases, (1847) 5 How. (U. S.) 504; Bartemeyer *v.* Iowa, (1873) 18 Wall. (U. S.) 133; Boston Beer Co. *v.* Massachusetts, (1877) 97 U. S. 25, 33; Foster *v.* Kansas, (1884) 112 U. S. 205; Schmidt *v.* Cobb, (1886) 119 U. S. 286; Mugler *v.* Kansas, (1887) 123 U. S. 623; Bowman *v.* Chicago, etc., R. Co., (1888) 125 U. S. 465; Kidd *v.* Pearson, (1888) 128 U. S. 1; Eilenbecker *v.* District Ct., (1890) 134 U. S. 31; Leisy *v.* Hardin, (1890) 135 U. S. 100; Lyng *v.* Michigan, (1890) 135 U. S. 161; Crowley *v.* Christensen, (1890) 137 U. S. 91; Reymann Brewing Co. *v.* Brister, (1900) 179 U. S. 445; *In re* Rahrer, (1891) 140 U. S. 545; Giozza *v.* Tiernan, (1893) 148 U. S. 657; Gray *v.* Connecticut, (1895) 159 U. S. 74; Cronin *v.* Adams, (1904) 192 U. S. 108.

state commerce law, which forbid the States from interfering with liquor passing through or brought into a State while it is in the condition of commercial transit.

d. To inspect food supplies.[9]

Food laws — interstate commerce.

Inspection laws passed by the State to secure pure food for its citizens are valid, but inspection laws which go beyond this purpose and either discriminate between classes or interfere with interstate commerce must yield to the supremacy of the Federal law. The decisions on this question are numerous, and each case which shall arise hereafter must depend upon the phraseology and effect of the law under consideration.

e. Authority to guard against the introduction of infected cattle from other States.[1]

Cattle laws.

This has been sustained in a number of cases, as has also a law which imposes damages upon owners for damage done by cattle or other stock in the highways.

f. To prohibit business on Sunday.[2]

The right of the State to prohibit business on Sunday has been upheld on the same ground of police powers.

g. For the same reason, to require licenses from venders.[3]

[9] Powell *v.* Pennsylvania, (1888) 127 U. S. 678; Minnesota *v.* Barber, (1890) 136 U. S. 318; Brimmer *v.* Rebman, (1891) 138 U. S. 78.

[1] Kimmish *v.* Ball, (1889) 129 U. S. 222; Jones *v.* Brim, (1897) 165 U. S. 180; Rasmussen *v.* Idaho, (1901) 181 U. S. 198; Morris *v.* Hitchcock, (1904) 194 U. S. 384; Reid *v.* Colorado, (1902) 187 U. S. 137.

[2] Hennington *v.* Georgia, (1896) 163 U. S. 299; Petit *v.* Minnesota, (1900) 177 U. S. 164.

[3] Brennan *v.* Titusville, (1894) 153 U. S. 289; Gundling *v.*

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h. The right to regulate the flow of oil wells and the like.[4]

i. Also the right to forbid the unlawful combination of citizens to injure others in their reputation, trade, or business, or combinations known as trusts deemed destructive of competition.[5]

k. To prescribe regulations concerning many other things.[6]

2. *The Right to Regulate Woman's Rights.*

Practice of law — suffrage.

One of the first claims decided was that of a woman, in *Bradwell v. State.*[7] She sought to compel the State of Illinois to admit her to the practice of law, but the court promptly held that while she was a citizen it was within the power of the State to de-

Chicago, (1900) 177 U. S. 183; Emert *v.* Missouri, (1895) 156 U. S. 296; W. W. Cargill Co. *v.* Minnesota, (1901) 180 U. S. 452.

[4] Montana Co. *v.* St. Louis Min., etc., Co., (1894) 152 U. S. 160; Holden *v.* Hardy, (1898) 169 U. S. 366; Backus *v.* Fort St. Union Depot Co., (1898) 169 U. S. 557; Ohio Oil Co. *v.* Indiana, (1900) 177 U. S. 190; St. Louis Consol. Coal Co. *v.* Illinois, (1902) 185 U. S. 203; Atkin *v.* Kansas, (1903) 191 U. S. 207.

[5] Aikens *v.* Wisconsin, (1904) 195 U. S. 194; Smiley *v.* Kansas, (1905) 196 U. S. 447.

[6] Markets: Natal *v.* Louisiana, (1891) 139 U. S. 621.

Dairies: Petit *v.* Minnesota, (1900) 177 U. S. 164.

Railroads in streets: Richmond, etc., R. Co. *v.* Richmond, (1877) 96 U. S. 521; New York *v.* Squire, (1892) 145 U. S. 175.

Grade crossings: New York, etc., R. Co. *v.* Bristol, (1894) 151 U. S. 556.

Fishing: Lawton *v.* Steele, (1894) 152 U. S. 133.

Inspecting mines: Montana Co. *v.* St. Louis Min., etc., Co., (1894) 152 U. S. 160.

Restraining contracts: Allgeyer *v.* Louisiana, (1897) 165 U. S. 579.

Marriage: Andrews *v.* Andrews, (1903) 188 U. S. 14.

Various objects: Wilson *v.* Eureka City, (1899) 173 U. S. 33; Lake Shore, etc., R. Co. *v.* Smith, (1899) 173 U. S. 684.

[7] Bradwell *v.* State, (1872) 16 Wall. (U. S.) 130.

termine whether she should be entitled to practice. In the case of *Miner v. Happersett*[7*] in the same volume, a woman claimed the right of suffrage, but the courts held that the right of suffrage was under the control of the State.

3. *The Right to Regulate the Practice of Professions.*[8]

Examination, license, and taxation.

Laws requiring professional men to submit to examination to procure licenses have been held not to invade any rights granted to them by the Constitution; but in one case the conviction of a lawyer refusing to pay a tax was held to be illegal and was set aside, and he was discharged on habeas corpus, because the tax demanded violated the contract clause of the Constitution by the manner of its imposition.

4. *Of Suffrage.*[9]

Early decisions — right to vote derived from the States.

In the first case which arose under the XIV Amendment involving the right of suffrage, the Su-

[7*] Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162.

[8] Bradwell *v.* State, (1872) 16 Wall. (U. S.) 130; Dent *v.* West Virginia, (1889) 129 U. S. 114; Royall *v.* Virginia, (1886) 116 U. S. 572; Gray *v.* Connecticut, (1895) 159 U. S. 74; Reetz *v.* Michigan, (1903) 188 U. S. 505.

"The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. . . . If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation." Dent *v.* West Virginia, (1889) 129 U. S. 122.

[9] Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162; U. S. *v.*

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preme Court was very positive in its statement that the right of suffrage was derived exclusively from the States; that it was not an incidental privilege or immunity of Federal citizenship before the adoption of the XIV Amendment; that the XIV Amendment did not add to the privileges or immunities which it undertook to protect; that suffrage was not even coextensive with State citizenship; that neither the Constitution of the United States nor the XIV Amendment made all citizens voters; and that a provision in the State constitution limiting suffrage to male citizens did not violate the Federal Constitution. In the next case in which suffrage was considered it was declared that the XV Amendment conferred no right to vote, and that it merely invested citizens of the United States with the right

Reese, (1875) 92 U. S. 214–217; U. S. *v.* Cruikshank, (1875) 92 U. S. 542–554; *Ex p.* Yarbrough, (1884) 110 U. S. 651; Neal *v.* Delaware, (1880) 103 U. S. 370; U. S. *v.* Waddell, (1884) 112 U. S. 76; McPherson *v.* Blacker, (1892) 146 U. S. 1; Taylor *v.* Beckham, (1900) 178 U. S. 548; Mason *v.* Missouri, (1900) 179 U. S. 328; Wiley *v.* Sinkler, (1900) 179 U. S. 58; Swafford *v.* Templeton, (1902) 185 U. S. 487; Gibson *v.* Mississippi, (1896) 162 U. S. 565; Williams *v.* Mississippi, (1898) 170 U. S. 213; Giles *v.* Harris, (1903) 189 U. S. 486; Green *v.* Mills, (1895) 69 Fed. Rep. 852, 159 U. S. 651; James *v.* Bowman, (1903) 190 U. S. 127; Pope *v.* Williams, (1904) 193 U. S. 621; Report of Committee on Elections, 58th Congress, Cong. Record, March 18, 1904, pp. 35, 92, 93.

"The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen." Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 171.

of exemption from discrimination against them (in the exercise of suffrage) by reason of race, color, or previous condition; but that the power of Congress to legislate at all concerning voting at State elections rests on the XV Amendment, and can be exercised only by providing punishment when the wrongful refusal is because of the race or color of the voter.

In the case of *U. S. v. Cruikshank*[1] it was said, referring to the two cases above: "The Constitution of the United States has not conferred the right of suffrage upon any one, and the United States have no voters of their own creation in the States." In the later case of *Ex p. Yarbrough,* it was said that there were cases in which the XV Amendment substantially conferred the right to vote on the negro, as where it was held, in the case of *Neal v. Delaware,*[2] to annul the word "white" in the State constitution.

Right to vote for Congressmen.

In the case of *Ex p. Yarbrough*[3] it was contended that "the right to vote for a member of Congress is not dependent upon the Constitution and laws of the United States, but is governed by the laws of each State respectively." The Supreme Court denied that, and answered it as follows: "It is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it

[1] (1875) 92 U. S. 542.
[2] (1880) 103 U. S. 370.
[3] (1884) 110 U. S. 651.

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shall be filled, namely, by election. Its language is: 'The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.' (Art. I, Sec. 2.) The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress, nor can they prescribe the qualification for voters for those *eo nomine.*"

Voting for presidential electors.

In the case of *McPherson v. Blacker*,[3*] it was said that the right of a citizen of the United States, from the time of his majority, to vote for presidential electors, is a right secured to him by Article II of the Constitution and is unaffected by the XIV and XV Amendments. So that, whatever may be said concerning the sources from which the right of suffrage is derived, it is certain that the right to vote for members of the House of Representatives and for presidential electors is derived from the Constitution of the United States itself and not from the States.

The framers of the Constitution saw fit to ascertain the Federal electorate by reference to a State rule of selection, but that does not make the right originate with the State any more than the measuring of cloth with a yardstick makes the cloth the product of a machine shop instead of a woolen factory.

3* (1892) 146 U. S. 1.

Jurisdiction of the Federal courts.

In two recent cases (*Wiley v. Sinkler*[4] and *Swafford v. Templeton*[5]), instituted in federal courts for alleged interference with the rights of the plaintiffs to vote at an election for members of the House of Representatives, the jurisdiction of the federal courts has been sustained, and the right of the citizens to vote for a member of the House of Representatives has been declared to have its origin in federal law; but the Supreme Court has steadily refused to entertain jurisdiction of questions of suffrage relating to State elections, where it was not pointed out that the law discriminated against a citizen on account of his race, color, or previous condition.

Power of States to restrict suffrage.

In the case of *Gibson v. Mississippi*,[6] it was declared that States are empowered to qualify the right of suffrage by conditions confining it to males, to freeholders, to citizens, to persons within certain ages, or to those having educational qualifications; the only limitation upon the power of the States being that the laws shall not in form or in administration discriminate between voters on account of race, color, or condition.

Possibility of wrongful administration of laws.

In *Williams v. Mississippi*[7] the court declared that provisions of a State constitution prescribing suffrage which were in themselves unobjectionable, and concerning the administration of which no specific wrong was alleged, would not be declared null merely because there was a possibility that in their

[4] (1900) 179 U. S. 58.
[5] (1902) 185 U. S. 487.
[6] (1896) 162 U. S. 565.
[7] (1898) 170 U. S. 213.

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administration wrong might be committed under them.

Examples of valid enactments.

In the case of *Pope v. Williams*,[8] very recently decided, a State law requiring voters to give twelve months' notice of an intention to claim citizenship was held not to be violative of the amendment; and even in the case of *Wiley v. Sinkler*, where the right asserted was held to be a Federal right, the court decided that in order to make a case of *prima facie* invasion of his right, the plaintiff must show not only that he was entitled to vote, but that he had complied with the State registration laws which prescribe the conditions precedent to the exercise of that right.

Political questions.

In sundry other cases recently decided, the effort has been made to induce the Supreme Court to consider the claims and to redress the wrongs of persons who alleged that they had been unlawfully deprived of suffrage; but the court has refused to entertain jurisdiction, declaring that the questions raised are political and call for redress which can be given only by the legislative and executive departments of the government.

The court's lack of power to relieve.

In the recent case of *Giles v. Harris*,[9] it was said: "The traditional limits of proceedings in equity have not embraced a remedy for political wrongs." And again: "In determining whether a court of equity can take jurisdiction, one of the first questions is what it can do to enforce any order that it may make. This is alleged to be the conspiracy of a State, although the State is not and could not be

[8] (1904) 193 U. S. 621.
[9] (1903) 189 U. S. 486.

made a party to the bill. The Circuit Court has no constitutional power to control its action by any direct means; and if we leave the State out of consideration, the court has as little practical power to deal with the people of the State in a body. The bill imports that the great mass of the white population intends to keep the blacks from voting. To meet such an intent something more than ordering the plaintiff's name to be inscribed upon the lists of 1902 will be needed. . . . Unless we are prepared to supervise the voting in that State by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form. *Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States.*"

Attitude of the House of Representatives.

While this has been the attitude of the Supreme Court upon suffrage questions, sundry States have been legislating upon the subject in such a way, that, on one pretext or another, large bodies of citizens who had exercised the right of suffrage uninterruptedly for many years under pledges given to Congress by the States, when they were restored to their relations in the Union, that their suffrage never would be curtailed, have been deprived of their right to vote. Despairing of obtaining any relief from the Federal judiciary, the attempt has been made to transfer the controversy to the House of Representatives. In the 58th Congress (1903–1905) contests were made up from the State of South Carolina in the House of Representatives, which, by

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the terms of the Constitution, is made the sole judge of the elections, returns, and qualifications of its members. (Article I, Section 5, Clause 1.) The issue thus presented challenged the right of any of the sitting representatives of South Carolina to hold their seats because of alleged violations of the Constitution of the United States in the State constitution and the laws regulating suffrage under which they were elected. The issues were squarely presented and called for a decision by the House; but the committee on elections made a report in which it stated that the cases involved grave constitutional questions, which, if decided in favor of the claimants, would go to the very foundation of the State government of South Carolina and would perhaps affect not only her representation, but that of the other States; that the House should hesitate about taking a step which might be so far-reaching in its consequences, until the legal questions involved were decided by the courts intrusted with the duty of constitutional interpretation, and that the courts might more safely be relied upon for correct decision than a transitory and ever-changing unprofessional body like the House of Representatives. And so the matter of suffrage rests; the courts declining to pass upon it as a political question, and Congress insisting that it is a judicial question. Meanwhile a great body of citizens whose very political being depends upon a decision are left without any tribunal to decide their rights.

Reasons for indifference as to negro suffrage.

The historian of our times may be at a loss to understand how a nation so powerful for self-preservation, and so insistent upon the establishment of

negro suffrage, afterwards became so weak and indifferent to providing means for its enforcement. It will be plain to him, if he recalls the facts that the bestowal of suffrage upon a great mass of ignorant people was, when it was done, the product of war passions rather than of reason, and that afterwards those war passions which gave rise to it subsided, but race prejudices survived and have brought the whites in the lately antagonistic sections of our country together against an alien race. Under the influence of those racial affinities, the whites of the triumphant section have resolved not to oppose their former antagonists, but brethren in race, in the effort to preserve white supremacy in all parts of the Union; and have even come to look upon the bestowal of suffrage upon the negro as a great mistake.

Negro suffrage a failure.

Negro suffrage has been pronounced a failure by men high in the trust and confidence of the political party which bestowed it; so pronounced, because it is evident to any student of our conditions that the negro is incapable of maintaining his right and has no considerable body of disinterested white friends to champion his cause.

This brings us, as related to the question of suffrage, to consideration of the second section of the XIV Amendment, which deals with the reduction of representation of the States in Congress, under certain circumstances.

Reduction of the Representation of the States in Congress.

Under the Constitution of the United States, as it was adopted and remained in force for seventy-

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Representation under Art. I. of the Constitution.

nine years (Article I, Section 2, Clause 3), representation in Congress was apportioned among the several States according to their *numbers,* determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The words "all other persons" meant slaves. The framers of the Constitution had an aversion to using the term slave or slavery in the instrument. The representation which the States should have, respectively, in Congress, led to long and trying discussions in the convention which framed the Constitution. The basis finally adopted was a compromise which gave the slave States representation for three-fifths of their slave population. But the people of the free States never acquiesced in the justice of this basis, and it was a constant source of jealousy and friction between the sections.

Basis adopted by the XIV Amendment.

While the XIII Amendment abolished slavery, it conferred no citizenship on anybody and effected no change in the basis of representation. The XIV Amendment was the work of the triumphant free States and was arranged to suit themselves. The slave States were virtually excluded from any voice in the discussion of the new basis of representation. Many ideas were advanced for the new basis. One proposition was to determine representation by the number of votes actually cast at general elections; another, that representation should be based on the number of males of voting age in each State. Finally the new basis adopted the words of the old Constitution, omitting all references to taxes, or persons

bound in service, and excluding from the computation of numbers only Indians not taxed. This was followed by a proviso authorizing Congress to reduce the representation from any State if it should deny to any of its male inhabitants, twenty-one years of age and citizens of the United States, the right to vote at certain elections, or in any way abridge the same, except for participation in rebellion or other crime. The elections referred to were (1) elections of electors of President and Vice-President of the United States or representatives in Congress; (2) elections of the executive and judicial officers of a State or members of the legislature. The reduction was to be effected by ascertaining the number of such male citizens so deprived or abridged of suffrage in the elections named, and reducing the congressional representation of the State in the proportion which the number of males deprived of suffrage might bear to the whole number of male citizens twenty-one years of age in such State. The fifth section of the amendment empowered Congress to enforce these provisions by appropriate legislation.

Let us examine critically the circumstances under which this power to reduce the representation of a State arises.

First, What denial or abridgment of suffrage by the State calls the power into play?

Second, Whether the denial or abridgment of the suffrage of a class must be for any particular cause.

What denial justifies reduction of representation.

Concerning the first: The denial or abridgment which justifies congressional action is not confined to Federal elections. Congress may act for the de-

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nial or abridgment of the right of a citizen to vote in a State election for the executive and judicial officers of the State or for members of the legislature. But its power arises only when the right of suffrage of a male citizen is denied or abridged. The power of a State to deny suffrage to the female sex is untouched by the Constitution of the United States. So also is the power of the State to prescribe the electorate in all State elections except for the executive or judicial officers of a State or members of the legislature.

Right to abridge suffrage restricted only by the XV Amendment.

Concerning the second inquiry, it will be observed that whereas representation of the States is primarily determined by the whole number of persons in each State, the reduction of the representation of the State can only be made for her denial or abridgment of the right of suffrage to male citizens of the United States twenty-one years of age, and then in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. It will also be observed that the XIV Amendment left the States at liberty to deny or abridge this right for any cause. That right to deny or abridge the right of suffrage is still unrestrained except by the XV Amendment. It forbids the United States or any State to deny or abridge it on account of race, color, or previous condition of servitude, but it does not go further.[1]

[1] "A few years' experience satisfied the thoughtful men who had been the authors of the other two amendments that, notwithstanding the restraints of those articles on the States, and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty, and property, without which

It is therefore manifest that but for the XV Amendment, the States would have the absolute power to fix the qualifications of voters and to limit and restrict the right to vote, as their several interests might seem to demand, and that the States still have that power except that they cannot deny or abridge the right of citizens of the United States to vote, on account of their race, color, or previous condition of servitude.

Constitutionality of the Reconstruction Acts.

Neither the XIV Amendment nor the XV Amendment forbids reasonable educational and property or other restrictions upon suffrage.[2] If a State constitution should provide that no one in the State shall enjoy the privilege of the ballot unless he is able to read and translate Hebrew and Sanskrit or to calculate eclipses of the heavenly bodies, what is there in the Federal Constitution or amendments to declare such legislation invalid? It was with the full knowledge of these facts that Congress

freedom to the slave was no boon. They were in all those States denied the right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked as was the negro, living in the midst of another and dominant race, could never be fully secured in their person and their property without the right of suffrage. Hence the Fifteenth Amendment." Slaughter-House Cases, (1872) 16 Wall. (U. S.) 71.

[2] "The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." Pope *v.* Williams, (1904) 193 U. S. 632.

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demanded of the States then lately in rebellion that before resuming their relations to the Union they should adopt constitutions with clauses in them providing for universal manhood suffrage, and should agree that these features be irrepealable. The States did accept such constitutions and did give such pledges. It remains to be tested how far they were obligatory upon them. Many wise and learned lawyers are of opinion that those acts of Congress and the acceptances of the States based upon them were unconstitutional because, under our federal plan of government, it is contemplated that the States shall be equal in authority and sovereignty.[3]

Arguments.

It is argued that there can be and should be no distinction between the States in their power to regulate their own affairs; that no State can voluntarily surrender any portion of the power reserved to it by the Constitution; and that Congress in demanding from the States these "fundamental conditions" of reconstruction, as they were called, created an unconstitutional discrimination in favor of the domestic sovereignty of the States which gave the pledge, making it different from that of the States

[3] In answer to an objection that the Georgia constitution "was adopted under the dictation and coercion of Congress, and is the act of Congress rather than of the State," the Supreme Court has said: "The result was submitted to Congress as a voluntary and valid offering, and was so received and so recognized in the subsequent action of that body. The State is estopped to assail it upon such an assumption. Upon the same grounds she might deny the validity of her ratification of the constitutional amendments. The action of Congress upon the subject cannot be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political department of the government, and is concluded by it." White *v.* Hart, (1871) 13 Wall. (U. S.) 649.

which gave no such pledge, thus tending to destroy that equilibrium of State sovereignty and independence which is demanded by considerations affecting the common welfare and is necessary to the permanency of the Union as well as to the integrity of the States composing it..

It is contended also that the right to vote is neither a natural right, nor one secured by the Federal Constitution except as provided in the XV Amendment; that it is purely a political privilege conferred upon certain members of the body politic for the benefit and welfare of all. That is true. But the entire frame of this government is predicated upon the idea that this is a government of the people, by the people, and for the people; and that the people have a right to choose their own representatives and to make and administer the laws. By the word "people" is always meant the intelligent mass of the community.

Theory of universal suffrage.

The theory of those who framed and induced the adoption of the XIV and XV Amendments was that it behooved the Federal government, not arbitrarily to establish, but to encourage, universal manhood suffrage; that it is its duty to prevent the denial of suffrage on account of the race, color, or previous condition of the citizen, but that beyond this it could not control State action on the subject; that it is the unmistakably correct policy of republican institutions to confer the ballot, as far as it may be safely done, upon all who are relied upon to bear the burdens and fight the battles of the government. Civil and political privileges are practically one. The rights of citizenship and of property are of

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little value and of small consequence in the absence of the right of the ballot to shield and protect them. No people or race of people can be said in any proper sense to enjoy the boon of freedom, if they are denied the power of participating in the making and administering of the laws. The right of suffrage under proper conditions is a stimulus to patriotism, an encouragement to civic pride, and an inspiration to improvement, and makes the citizen a better citizen by the sense of being part of his government and by imposing on him responsibility for the wisdom of that government and the success of its administration.[4]

Importance of the power to reduce representation.

Congress doubtless reserved to itself the power to reduce representation under the conviction that while it might not have power to prevent States from denying or abridging suffrage in all respects, it should have power to reduce their representation in Congress if for any cause States should abridge their own electorates so as to make the voting class cease to be representative of popular sovereignty. It has been said that this is the only agency at the command of Congress by which to make good to the States the constitutional guaranty of republican government in spirit as well as in form. If for instance, the millionaires of a State should succeed in confining suffrage to a few very wealthy men, it would be, in effect, the substitution of a

[4] For the above order of presentation and much of the language, the author is indebted to the Hon. Edgar D. Crumpacker, of Indiana, having found them in a remarkably able speech on representation and suffrage made by him in the House of Representatives. Feb. 24. 1905.

moneyed aristocracy for free democracy in that State. Under the XIV Amendment Congress would have power in such case to reduce the representation of that State in proportion to the disfranchisement. The denial or abridgment in that instance would have nothing to do with race, color, or previous condition, yet the power to deal with it, conferred by the XIV Amendment, is apparent, and may become of vital importance as the only available way of practically enforcing the Federal guarantee of a republican form of government for the States.

Power to reduce not repealed by the XV Amendment.

The argument has been made that the power granted to Congress by the XIV Amendment to reduce representation for disfranchisement was repealed by the adoption of the XV Amendment. The fallacy of this contention is apparent at a glance. The XV Amendment prohibits the States from denying or abridging the right of suffrage for a single cause, viz., race, color, or previous condition. The XIV Amendment authorizes the reduction of representation if the right of suffrage is denied or abridged for any cause. If a State should abridge the right to an arbitrary or unreasonable extent, by imposing educational, or property, or so-called "intelligence" qualifications, or by any more unreasonable methods, Congress would have the power to examine into its action and to judge whether such practical denial or abridgment of suffrage subjected that State to liability to have its representation reduced. The denial or abridgment on account of race, color, or previous condition would be a nullity because it is made unconstitutional by the XV Amendment. That would

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perhaps prevent Congress from reducing representation by reason of such a law, because, being inoperative, it could neither deny nor abridge the right of any class. Doubtless it was a solicitude for the protection of the colored citizen that inspired the XIV Amendment, but it is written in general terms and applies to all classes of people, and notwithstanding the XV Amendment it stands unrepealed. Minnesota can no more disfranchise a considerable portion of her white citizens without reference to race or color, and escape the risk of having her representation reduced therefor, than can Mississippi disfranchise her black citizens. The XIV Amendment is as operative to-day as it was the day of its enactment. An educational or a property qualification imposed by any State of this Union to the extent of reducing popular representation, and to the destruction of real popular representative government, is as plain an abridgment of the right of suffrage, contrary to the spirit of the XIV Amendment, as an abridgment on account of race, color, or condition. One of these restrictions is as capable of abuse with sinister motives as the other, and it is within the plain power of Congress to consider and deal with both.

Improbability of actual reduction — reasons.

So much for the letter and the spirit of the law of federal representation in Congress. As a practical question it is not probable that Congress will ever enact a law to enforce the provisions of the second section of the XIV Amendment by "appropriate legislation," or that it will ever attempt to reduce the representation of any State because it has denied or abridged the right of citizens of the United

States to vote at any of the elections named in the amendment. The reasons for this opinion are brief. In the first place, the overwhelming majority of representatives in Congress are white men. The racial sympathy existing between white representatives of States where the blacks are few, and the white representatives of the States which disfranchise them, is stronger than any political theories. The statutes of the States where the blacks are disfranchised do not openly aver the real purposes of the acts. They are ostensibly based upon sundry other disqualifications, educational, ownership of property, registration, residence, etc. If the legislation is assailed, those who frame it admit its real purpose, in private, and justify it by specious appeals to racial sympathies and exaggerated pictures of the dangers to white supremacy in their section unless the course adopted be followed. So industriously is this system of persuasion and appeal to racial sympathy pursued, that even political antagonists are soon converted to this idea of "doing evil that good may come of it," and join in the effort to demonstrate that the discriminations are not racial. Once off that dangerous ground, new elements of sympathy are enlisted, for, throughout the North and West, educational and property qualifications are deemed justifiable limitations upon suffrage, and it would be impossible to secure, by the votes of representatives from those sections, any Act of Congress reducing the representation of any State for other than race discrimination.

Trading politics.

Congress is a changing body, and while its members from some sections, as a rule, remain but a short

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time, a representative from the South, under the system prevailing, once elected is apt to stay for a long time; and as he becomes familiar with congressional methods he becomes more and more master of the Machiavelian logic of his peculiar school, and past master of the trading politics which have always characterized the dealings with each other of representatives from the different sections in Congress. He knows that he will be called upon to make many concessions to the representatives of other sections upon commercial legislation, and on questions affecting their local interests. In return he has, as a rule, but one concession to demand from them, and that is both in accord with their own prejudices and in the line of interests against congressional interference with their own States. It is the privilege of being left alone in the management of his State affairs.

Considerations inducing nonaction.

The power granted by the amendment against the States is too broad to be comfortable to those called on to enforce it. It can never be exercised save by the vote of a majority of representatives from the States to be affected. It is not likely that any party will ever possess a majority sufficient to enforce these provisions against any State, for there will ever be a margin of timid representatives who will fear the effect on their own fortunes at home if they should recognize a principle which may be dangerously turned against their own constituents. The bargain is easy; the result, nonaction by Congress. And so far as any practical results are to be expected from the exercise of this power of Congress to reduce representation, it is as unlikely that

Congress will act as that it will some day declare this government to be an absolute monarchy.

5. *The Right of States to Regulate State Procedure, Especially Concerning the Summoning and Constitution of Juries.*[5]

Interference with State procedure in general.

Many cases have arisen in which the trial of citizens by the State according to State procedure has been questioned as an infringement of a right secured by the XIV Amendment. The only cases in which these claims have been sustained are those in which there was a discrimination on account of race, color, or previous condition.

Right to juries in federal courts.

The right of a citizen of the United States to trial by jury in a federal court is absolute in all trials for crimes except in cases of impeachment (Constitution, Article III, Section 1, Clause 3, and Amendment VII), and in suits at common law where the value in controversy does not exceed twenty dollars (Amendment VII). But even concerning this right it has been held that in contempt proceedings the party in contempt is not entitled to a trial by jury within the meaning of the provisions of the Constitution.[6]

Right to juries in State courts.

While, as a rule, the several States guarantee to

[5] "The limit of the full control which the State has in the proceedings of its courts, both in civil and criminal cases, is subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution." West *v.* Louisiana, (1904) 194 U. S. 263.

The decisions of the United States Supreme Court on the rights of the State to regulate procedure are listed at the close of this volume in Appendix B.

[6] Eilenbecker *v.* District Ct., (1890) 134 U. S. 31.

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their citizens trials by jury, it has been held that trial by jury in the State courts for offenses against the State is not a privilege or immunity of national citizenship which the XIV Amendment forbids the States to abridge.[7]

When interference with State procedure justified.

In the case of *Louisville, etc., R. Co. v. Kentucky,*[8] the Supreme Court said: "For the Federal courts to interfere with the legislative department of the State government, when acting within the scope of its admitted powers, is always the exercise of a delicate power, one that should not be resorted to unless the reason for doing so is clear and unmistakable."

The same language is equally applicable to an interference with the judiciary department of a State government.

In the case of *McPherson v. Blacker,*[9] the Supreme Court again said that the XIV Amendment did not "radically change the whole theory of the relations of the State and Federal governments to each other, and of both governments to the people."

[7] Edwards *v.* Elliott, (1874) 21 Wall. (U. S.) 557; Walker *v.* Sauvinet, (1875) 92 U. S. 90; Pearson *v.* Yewdall, (1877) 95 U. S. 294.

"The States, so far as this amendment is concerned, are left to regulate trials in their own courts in their own way. A trial by jury in suits at common law pending in the State courts is not, therefore, a privilege or immunity of national citizenship, which the States are forbidden by the Fourteenth Amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the State courts affecting the property of persons must be by jury. This requirement of the Constitution is met if the trial is had according to the settled course of judicial proceedings." Walker *v.* Sauvinet, (1875) 92 U. S. 92.

[8] (1902) 183 U. S. 511.

[9] (1892) 146 U. S. 39.

In the case of *Williams v. Mississippi,*[1] the Supreme Court said: "The conduct of a criminal trial in a State court cannot be reviewed by the Supreme Court of the United States, unless the trial is had under some statute repugnant to the Constitution of the United States, or was so conducted as to deprive the accused of some right or immunity secured to him by that instrument."

Same — criminal trials.

In the case of *In re Converse,*[2] it is said: "The XIV Amendment . . . was not designed to interfere with the power of the State to protect the lives, liberty, and property of its citizens; nor with the exercise of that power in the adjudications of the courts of a State in administering the process provided by the law of the State."

Unimpaired powers of the States.

And while the court has repeatedly declared that in determining the qualifications of State jurors the States must take care that no discrimination in respect to such service be made against any class of citizens solely because of their race, it also held in the case of *In re Shibuya Jugiro*[3] that no person charged with a crime involving life and liberty is entitled, by virtue of the Constitution of the United States, to have his race represented upon the grand jury that may indict him, or upon the petit jury that may try him, and that it rests with each State to prescribe such qualifications as it deems proper for jurymen, subject only to the limitation against race discrimination above referred to.

Right to racial representation on juries.

[1] (1898) 170 U. S. 213.
[2] (1891) 137 U. S. 631.
[3] (1891) 140 U. S. 297.

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In the case of *Ex p. Reggel*[4] it was declared that the State may regulate State procedure.

Qualifications of jurors.

In the case of *Gibson v. Mississippi*[5] it was decided that the States may impose for jury service conditions confining jurors to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications, and that the claim to a mixed jury is not a matter of right; that it is a denial, because of color, of rights accorded to whites, that constitutes the forbidden discrimination.

Number of jurors.

In the case of *Maxwell v. Dow*,[6] the complainant averred that he was deprived of his privileges and immunities by a trial in the State court by a jury of eight persons. The decision was adverse to his claim on the ground that the right of trial by a jury of twelve was a guarantee of the Federal Constitution concerning federal trials, and the State had a right to prescribe a trial by eight jurors if that was the ordinary course of legal procedure.

Punishment of habitual criminals — form of capital punishment.

Some amusing claims have been made under the supposed protection of this guarantee, as for example, in the case of *McDonald v. Massachusetts*,[7] where the power of the State to impose additional punishment upon habitual criminals was questioned; but the contention was rejected and the States were

[4] A State "has the right to establish the forms of pleadings and process to be observed in her own courts, in both civil and criminal cases, subject only to those provisions of the Constitution of the United States, involving the protection of life, liberty, and property in all the States of the Union." *Ex p.* Reggel, (1885) 114 U. S. 651.

[5] (1896) 162 U. S. 565.

[6] (1900) 176 U. S. 581.

[7] (1901) 180 U. S. 311.

held to have the power to impose such additional punishment. In the case of *In re Kemmler*,[8] one who had been condemned to death in a State proceeding in New York, and sentenced to electrocution, questioned the power of the State to impose such a sentence. The privilege which he appears to have asserted was the privilege of being hanged instead of being electrocuted; but the decision was adverse, for the State was declared to possess complete control of the subject, and his right, if such a fanciful claim may be so called, was held not to be within Federal protection.

Extent of review by federal courts.

It has been repeatedly held that where the proceedings in a State court are according to the regular forms of State procedure and not based on laws which create the forbidden discrimination, the federal court has no jurisdiction to inquire or decide whether erroneous rulings were made in the trial or to review the trial as upon an appeal on the merits, and that the function of the federal tribunal is confined to the inquiry whether the law involved, in terms, or in its administration, makes a discrimination against the accused on account of race, color, or condition.

Judicial statements of State rights of procedure.

As was said in the case of *Kennard v. Louisiana*,[9] the real inquiry concerning the legality of the procedure in a State court is whether the trial was had in the State court "in due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights" and it was added, "irregularities and mere

[8] (1890) 136 U. S. 436.
[9] (1875) 92 U. S. 480.

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errors in the proceedings can only be corrected in the State courts." And in the later case of *Presser v. Illinois*[1] it was said that the State may pass any laws in regulating the privileges and immunities of its citizens if they do not abridge their privileges and immunities as citizens of the United States. Varying the number of challenges of veniremen in proceedings in the State court in different parts of a State is not a denial of the equal protection of the law.[2]

Power of State to deal with crime.

The power of the State to deal with crime within its borders is not limited by the XIV Amendment save that no State can deprive parts or classes of its people of equal and impartial justice.[3]

Right to particular form of action.

In the case of *Iowa Cent. R. Co. v. Iowa*[4] it is said that it is not "a right, privilege, or immunity of a citizen of the United States to have a controversy in the State court prosecuted or determined by one form of action instead of by another."

Marriage and divorce.

The case of *Andrews v. Andrews*[5] contains an important and instructive discussion of the power of the States to prescribe and control State procedure on questions of marriage and divorce.

Excluding negroes from juries — proof.

Actual discriminations by officers charged with the administration of State statutes unobjectionable in themselves, against the rights of a negro on trial, by purposely excluding negroes from the jury will not be presumed but must be proved, and in order

[1] (1886) 116 U. S. 252.
[2] Hayes *v.* Missouri, (1887) 120 U. S. 68.
[3] Leeper *v.* Texas, (1891) 139 U. S. 462.
[4] (1896) 160 U. S. 393.
[5] (1903) 188 U. S. 14.

to sustain a motion to quash an indictment because negroes were excluded from the grand jury a defendant must prove the fact or offer to prove it.[6]

Supplementing the above outlines of the decisions upon the question what State procedure is within the power of the States to regulate, the reader will find a full collection of the authorities in Appendix B at the end of this book.

An interesting discussion of the reserved powers of the States will be found in the dissenting opinion of Mr. Justice White, in the famous "merger decision."[7]

6. *Of the Power of the State to Control and Regulate the Business of Corporations in the State.*[8]

State regulations not obnoxious to the XIV Amendment.

Numerous decisions are to the effect that corporations are within the meaning of the XIV Amendment.[9] But the fact that they are within the

[6] Brownfield *v.* South Carolina, (1903) 189 U. S. 426; Smith *v.* Mississippi, (1896) 162 U. S. 592.

[7] Northern Securities Co. *v.* Minnesota, 194 U. S. 48.

[8] The decisions of the United States Supreme Court on the power of the States to regulate and control the business of corporations are listed in the order of their rendition at the close of this volume. See Appendix C.

[9] Santa Clara County *v.* Southern Pac. R. Co., (1886) 118 U. S. 394; Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 189; Missouri Pac. R. Co. *v.* Mackey, (1888) 127 U. S. 209; Minneapolis, etc., R. Co. *v.* Beckwith, (1889) 129 U. S. 28; Home Ins. Co. *v.* New York, (1890) 134 U. S. 606; Charlotte, etc., R. Co. *v.* Gibbes, (1892) 142 U. S. 391; Gulf, etc., R. Co. *v.* Ellis, (1897) 165 U. S. 154; Covington, etc., Turnpike Road Co. *v.* Sandford, (1896) 164 U. S. 592; Lake Shore, etc., R. Co. *v.* Smith, (1899) 173 U. S. 690; Covington, etc., Turnpike Road Co. *v.* Sandford, (1896) 164 U. S. 578; Smyth *v.* Ames, (1898) 169 U. S. 466.

"It is now settled that corporations are persons within the meaning of the constitutional provisions forbidding the deprivation

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meaning of the amendment does not give foreign insurance companies any more rights as against the State than they had before its enactment. The State may still regulate the terms upon which they may be admitted to do business in the State.[1] It may enact penalties for their negligence.[2] The State may regulate grade crossings of railroads.[3] It may also pass laws establishing a rule of damages in the case of injuries to employés under what is known as the "fellow-servant law."[4] It has also been held that the States may classify the subjects

of property without due process of law, as well as a denial of the equal protection of the laws." Covington, etc., Turnpike Road Co. *v.* Sandford, (1896) 164 U. S. 592.

"The rights and securities guaranteed to persons by that instrument [the Constitution] cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens." Gulf, etc., R. Co. *v.* Ellis, (1897) 165 U. S. 154.

[1] Philadelphia F. Assoc. *v.* New York, (1886) 119 U. S. 110; Waters-Pierce Oil Co. *v.* Texas, (1900) 177 U. S. 28; Orient Ins. Co. *v.* Daggs, (1899) 172 U. S. 557.

[2] Missouri Pac. R. Co. *v.* Humes, (1885) 115 U. S. 513.

"The inhibition of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of person there is no doubt that a private corporation is included; . . . [but] the State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce." Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 188.

[3] New York, etc., R. Co. *v.* Bristol, (1894) 151 U. S. 556.

[4] Tullis *v.* Lake Erie, etc., R. Co., (1899) 175 U. S. 348.

of legislation and make different regulations as to the property of different individuals differently situated. The provisions of the Federal Constitution are satisfied if all persons similarly situated are treated alike in the privileges conferred and the liabilities imposed.[5]

7. *The Right to Control the Conduct of Individuals and Bodies of Citizens in Public Places.*

Police powers as to public places.

The XIV Amendment did not destroy the power of the States to enact police regulations concerning the subjects within their control.[6] In *Presser v. Illi-*

[5] Field *v.* Barber Asphalt Paving Co., (1904) 194 U. S. 621, where the court said: "It is not the purpose of the Fourteenth Amendment, as has been frequently held, to prevent the States from classifying the subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."

"Legislation does not infringe upon the clause of the Fourteenth Amendment requiring legal protection of the laws, because it is special in its character; if in conflict at all with that clause, it must be on other grounds. And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions." Missouri Pac. R. Co. *v.* Mackey, (1888) 127 U. S. 209.

[6] "Neither the amendment — broad and comprehensive as it is — nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity." Barbier *v.* Connolly, (1885) 113 U. S. 31.

"The police power cannot be put forward as an excuse for oppressive and unjust legislation, [but] it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion 'is

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nois,[7] it was declared that the State may pass laws regulating the privileges and immunities of its own citizens if they do not abridge their privileges and immunities as citizens of the United States. And in *Davis v. Massachusetts*,[8] a municipal ordinance making it necessary to procure a permit from the mayor to entitle a person to make a public address upon any public grounds of the city was held to be valid, as a mere exercise of the administrative authority within the police power of the State.

Numerous cases cited in note 6, p. 214, *supra*, sufficiently sustain this power, especially the case of *Wilson v. Eureka City*.[9]

8. *To Require Citizens to Observe Morality and Decency.*

Contentions against enforcement of moral relations.

The claims to immunity asserted against this power are in many instances ludicrous. For example, a negro citizen of Alabama who was prosecuted for living openly in improper relations with a white woman pleaded the immunity of the XIV Amendment. The reply was that nothing in the amendment warranted any such violation of decency.[1] So also the right to live in a state of polygamy was asserted as a religious tenet of the accused. The right was denied on the ground that crime could not

necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.'" Holden *v.* Hardy, (1898) 169 U. S. 392.

[7] (1886) 116 U. S. 252.

[8] (1897) 167 U. S. 44.

[9] (1899) 173 U. S. 32.

[1] Pace *v.* Alabama, (1882) 106 U. S. 583.

be covered up by pleading that it was committed as a part of the religious faith of the defendant.[2] And the law of Illinois forbidding gambling in options was likewise held to be within the power of the State.[3]

9. *Of the Power of the State to Separate the Races in Public Places.*

Public conveyances — interstate commerce.

This question has given rise to a series of most interesting decisions. The first case in the Supreme Court was that of the *Louisville, etc., R. Co. v. Mississippi.*[4] The State law of Mississippi provided for the separation of blacks and whites in public conveyances. The Supreme Court of Mississippi decided that the law did not apply to interstate commerce, and the Supreme Court of the United States, adopting that construction of the law, held that it was competent to the State in the exercise of its police powers to separate the races, and declared that it was no discrimination on account of race, or

[2] Davis *v.* Beason, (1890) 133 U. S. 333.

[3] Booth *v.* Illinois, (1902) 184 U. S. 425. See also McDonald *v.* Massachusetts, (1901) 180 U. S. 311; Otis *v.* Parker, (1903) 187 U. S. 606; U. S. *v.* Williams, (1904) 194 U. S. 279; Public Clearing House *v.* Coyne, (1904) 194 U. S. 497.

"If, looking at all the circumstances which attend or may ordinarily attend the pursuit of a particular calling, a State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere unless, looking through mere forms and at the substance of the matter, they can say that the statute, enacted professedly to protect the public morals, has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." Booth *v.* Illinois, (1902) 184 U. S. 425.

[4] (1890) 133 U. S. 587.

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badge of servitude put upon either race, to require that they should be separated.

In the later case of *Plessy v. Ferguson*[5] this idea was expressed as follows: "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color."

Schools.

The question likewise came up in regard to the separation of the races in public schools, in the case of *Cumming v. Board of Education*,[6] where it was said: "Interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured. . . . The education of the people in schools maintained by State taxation is a matter belonging to the respective States."

10. Of the Power of the State to Regulate State Taxation.[7]

Grounds of objection to statutes.

Many questions have arisen upon this power of State taxation, and in nearly every case the particular State law involved was assailed on the triple ground that it abridged privileges and immunities, that it deprived of due process of law, and that it deprived of the equal protection of the laws. A study of the cases will be necessary to an under-

[5] (1896) 163 U. S. 544; Chesapeake, etc., R. Co., *v.* Kentucky, (1900) 179 U. S. 388.

[6] (1899) 175 U. S. 528.

[7] The decisions of the United States Supreme Court on the power of the States to regulate State taxation are listed in the order of their rendition at the close of this volume. See Appendix D.

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standing of all the points decided. The following are some of the general principles settled:

Discrimination within a class.

A State law of taxation which discriminates between the complainant and others of the same class is invalid. A State law of taxation which taxes an individual at a rate different from those in his class, in effect denies him the equal protection of the laws. It was not the purpose or function of the amendment to change the system or policy of the State in regard to the devolution of estates or to limit the extent of the taxing power of the State in cases of the devolution of estates. States have a right to classify the subjects of taxation when the property of different individuals is differently situated, and if all persons similarly situated are treated alike in the liabilities imposed the State does not violate the amendment.

Special taxes in particular districts.

The State may pass special legislation of a special character applicable to and imposing taxes on certain districts only, for particular improvements there, such as draining marshes and irrigating arid plains, supplying water for preventing fires, lighting particular districts, cleaning particular streets, opening parks, and for many other objects; and regulations for these purposes may press with more or less weight upon one than upon another citizen; but in their design they are not to impose unequal and unnecessary restrictions upon any one, and though necessarily special in their character, they furnish no ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions.[8]

[8] "The amendment does not prevent the classification of property

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Class legislation — local assessments.

Class legislation, discriminating against some and favoring others, is prohibited by the amendment, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.[9] So, too, in the case of a nonresident whose lands were subjected to a local assessment for the common benefit of the locality, the same assessment be-

for taxation, subjecting one kind of property to one rate of taxation, and another kind of property to a different rate; distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it. And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected." Home Ins. Co. *v.* New York, (1890) 134 U. S. 606.

[9] "Clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every State, in one form or another, deems it expedient to adopt." Bell's Gap R. Co. *v.* Pennsylvania, (1890) 134 U. S. 237.

"Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property

ing levied against resident property-holders in the same vicinity, it was held that the law levying the assessment was not a discriminating tax. And a paving ordinance making an assessment on people in a particular neighborhood for the benefit of their common property was held not to violate any privilege or immunity of the citizen because it applied to all similarly situated.

11. Of the Right of the State to Control State Elections.

Interference for racial discrimination only.

This subject was fully discussed in the celebrated case of *Taylor v. Beckham,*[1] and has already been referred to, and it is sufficient to say concerning it that federal courts have repudiated any jurisdiction to consider the conduct of the results of State elections unless in some controversy wherein the law under which they were held, or the manner in which they were conducted, discriminated against the complainant by reason of his race.

Due Process of Law.

History of the proviso — difficulty of defining the term.

Amendment V to the Constitution provides that the Federal government shall not deprive any citizen of life, liberty, or property without due process

subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect." State Railroad Tax Cases, (1875) 92 U. S. 612.

[1] (1900) 178 U. S. 548, where the court said in part: "It is obviously essential to the independence of the States, and to their peace and tranquillity, that their power to prescribe the qualifications of their own officers, the tenure of their offices, the manner of their election, and the grounds on which, the tribunals before

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of law. Although that proviso remained in the Constitution until the adoption of the XIV Amendment, the only case in which the meaning of these words was construed in the eighty years that it stood alone is the case of *Murray v. Hoboken Land, etc., Co.*[2] The XIV Amendment merely made that same rule obligatory upon the States. Within the forty years since the adoption of the amendment, there has never been a time when the Supreme Court docket was not crowded with cases in which it was claimed that State legislation had deprived the complainant of life, liberty, or property without due process of law. A glance at the formidable array of cases in which the Supreme Court has passed upon this question gives but a faint idea of the amount of litigation to which it has given rise. In one of the earliest cases, *Davidson v. New Orleans,*[3] Mr. Justice Miller, perhaps the ablest judge on the Supreme Court bench since the adoption of the XIV Amendment, rendered an opinion in which he gave

which, and the mode in which, such elections may be contested, should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States."

[2] (1855) 18 How. (U. S.) 272.

[3] (1877) 96 U. S. 97.

While the provision of the Fourteenth Amendment which ordains that no State shall " deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, . . . is new in the Constitution of the United States, as a limitation upon the powers of the States, it is old as a principle of civilized government. It is found in Magna Charta, and, in substance if not in form, in nearly or quite all the constitutions that have been from time to time adopted by the several States of the Union. By the Fifth Amendment, it was introduced into the Constitution of the United States as a limitation upon the powers of the national government, and

the origin and history of this provision of the Constitution as found in Magna Charta and in the V and XIV Amendments of the Constitution of the United States. In that opinion he also said: "But, apart from the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive, and satisfactory, there is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require." And in a very recent case,[3*] Mr. Justice McKenna, delivering the opinion of the court, reverted to this expression of Mr. Justice Miller and said that the court was still pursuing the process of inclusion and exclusion as the cases were presented for decision, but was still unprepared to formulate a definition.

Litigation under the V and XIV Amendments.

In delivering the opinion in *Davidson v. New Orleans,*[4] Mr. Justice Miller also used the following emphatic language: "It is not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal government, for nearly a century, and while, during all that time, the manner in which the powers of that government have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its

by the Fourteenth, as a guaranty against any encroachment upon an acknowledged right of citizenship by the legislatures of the States." Munn *v.* Illinois, (1876) 94 U. S. 123.

[3] * Orient Ins. Co. *v.* Daggs, (1899) 172 U. S. 557.

[4] (1877) 96 U. S. 97.

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branches, this special limitation upon its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion; but while it has been a part of the Constitution, as a restraint upon the power of the States, only a very few years, the docket of this court is crowded with cases in which we are asked to hold that State courts and State legislatures have deprived their own citizens of life, liberty, or property without due process of law. There is here abundant evidence that there exists some strange misconception of the scope of this provision as found in the XIV Amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded."

Claims almost invariably rejected.

The honored judge who uttered these words has been in his grave for many years, but the cases involving the abstract opinions of unsuccessful litigants in State courts have continued to multiply. The decisions rendered by this court are so nearly unanimous in rejecting the claims made, that they might well be described as decisions upon what the XIV Amendment does not mean, rather than adjudications of rights arising under it.

The earliest interpretation of the meaning of this clause was in the case of *Kennard v. Louisiana*,[5]

[5] (1875) 92 U. S. 480.

The general principle established.

where it was said that due process of law meant the trial of a case in due course of legal proceedings, in a State court, according to those rules and forms which have been established for the protection of private rights. In *Caldwell v. Texas*[6] it was said that due process of law is secured when the laws operate on all alike, and no one is subjected to a partial or arbitrary exercise of the powers of government. In the hundreds of cases since decided the opinions delivered merely ring the changes in the particular case upon this general principle.

A volume, interesting and instructive, might unquestionably be written upon the cases decided, but it is doubtful if any new principles would be found in them. Moreover, as each new case arises, those intrusted with its conduct will be forced to an examination of the decisions in detail in order to discover in what respects their case is similar to the others that have gone before, and how far the decisions already rendered or passed upon by the State affect the case submitted to them. For these reasons, and for the further reason that this subject of due process of law is to be treated in a separate volume, we shall not discuss it further.[7]

To ascertain whether a particular process is due process "we must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." Murray *v.* Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 277.

[6] (1891) 137 U. S. 692.

[7] See "Due Process of Law" by Lucius P. McGehee.

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Of the Equal Protection of the Law.

Relation to due process of law.

Nearly all the cases above cited with reference to the abridgment of privileges and immunities by due process of law deal with the question of what is and what is not equal protection of the law, and a full discussion in this place of the decisions in all those cases would not only involve infinite repetition, but would occupy a space that cannot be spared to it.

Exclusion of negroes from juries.

It has been decided that the exclusion of colored citizens by law from juries summoned to try persons of their race is a denial of the equal protection of the law. The authorities on this point are the same as those cited in connection with the abridgment of privileges and immunities.

Territorial and municipal arrangements.

A State law establishing one system of law in one portion of its territory and another system in another, prescribing the jurisdiction of the several courts with reference to territory, subject-matter, and the finality of the judgments rendered, was, however, held not to be obnoxious to the XVI Amendment. That amendment was declared to contemplate the protection of persons and classes, and not to relate to territorial or municipal arrangements made for the different portions of the States.[8]

Business regulations.

So, too, in another case a distinction was pointed out between discriminations concerning different kinds of business in certain hours and discriminations between different classes engaged in the same

[8] Missouri *v.* Lewis, (1879) 101 U. S. 22.

kind of business. The former were declared to be admissible, the latter inadmissible.[9]

In the case of *Yick Wo v. Hopkins*,[1] which arose under certain laws of San Francisco plainly discriminating against Chinamen, and upon proof that these laws were partially administered, it was held that arbitrary and unjust discriminations founded on differences of race between persons otherwise in similar circumstances were violative of the XIV Amendment. The court said that if the law was so framed as to admit of a partial administration, it was void. But in a later case in which the constitution and laws of a State were assailed as framed and fraudulently intended to exclude the negro population from suffrage, the court said that where the provisions of a State constitution or law do not, on their face, show a discrimination, and it has not been shown that their actual administration is evil, but only that evil is possible under them, they are not obnoxious to the XIV Amendment.[2]

[9] Soon Hing *v.* Crowley, (1885) 113 U. S. 703, where the court said: "The specific regulations for one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws."

[1] (1886) 118 U. S. 356.

[2] Williams *v.* Mississippi, (1898) 170 U. S. 213.

On the other hand, "though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial

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Regulation of railroads.

The creation of certain State railroad commissions with power to regulate domestic operation of railroads was held not to violate this principle.

Statutes requiring licenses for dogs.

The case which is perhaps more signally illustrative of the extent to which these extravagant claims have been carried than any other is that in which a man owning a Newfoundland dog sued a railroad for killing the dog. The railroad defended by pleading a State statute which denied to the owner of a dog the right to sue for the same as property unless he had first registered the animal and paid a license fee. The court below sustained the plea, and the plaintiff appealed to the Supreme Court of the United States on the ground that the State law denying the right to sue for the value of his dog unless he registered it and paid a license abridged his privilege, deprived him of his property without due process of law, and denied him the equal protection of the laws. It is hardly necessary to add that the Supreme Court rejected the claims asserted.[3]

Rights settled by the XIV Amendment.

Having now fully considered every aspect of the amendment and the decisions rendered under it, we may leave the subject with the single remark that while it has not proved to be "a new Magna Charta," the great discussions of the true relations between the Nation and the States composing it, and of citizens to Nation and State, to which this amendment has given rise, have resulted in a most beneficial and thorough understanding of what rights of

of equal justice is still within the prohibition of the Constitution." Yick Wo *v.* Hopkins, (1886) 118 U. S. 356.

[3] Sentell *v.* New Orleans, etc., R. Co., (1897) 166 U. S. 698.

the citizen are derived from and protected by the Nation, and what are derived from and protected by the States. It is doubtful whether without the XIV Amendment these questions would have been so fully digested and settled in a century of litigation.

The Fifteenth Amendment.

Language of the Amendment.

The language of the XV Amendment is as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation."

Relates exclusively to voting.

The amendment relates exclusively to the subject of voting. It simply forbids either the Federal or the State government to deny or abridge the right of citizens of the United States to vote "on account of race, color, or previous condition of servitude."

Causes of denial comprehended.

It relates to no other cause of denial than race, color, or previous condition of servitude. It does not forbid the denial or abridgment of the right to vote, by the Nation or the State, for any other cause.

Acts of individuals not inhibited.

It makes no attempt to forbid or to punish the effort by an individual to deny or abridge the right of a citizen to vote, and it gives to Congress no power to legislate against an individual who attempts to deny or abridge the right of a citizen to vote. The prohibition of the amendment is against the United States and the States alone. The power given to Congress to enforce the article is power to enforce

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it against the United States or the States; which is not power to legislate against individuals for like offenses.[4] Such legislation by Congress against individuals has been held to be beyond the power of Congress, and not "appropriate legislation" within the meaning of the amendment.

Decisions — origin of right of suffrage.

The first case in which the power of Congress to legislate, under this amendment, against individuals, for offenses committed against suffrage, is the case of *U. S. v. Reese,*[5] and the last case is the case of *James v. Bowman.*[6] Between these two come the cases of *U. S. v. Harris*[7] and *Baldwin v. Franks.*[8] All are to the same effect. In the cases of *U. S. v. Cruikshank,*[9] *McPherson v. Blacker,*[1] *Wiley v. Sink-*

[4] "The principles of interpretation applicable to the first section of the Fourteenth Amendment are equally applicable to the construction of the Fifteenth Amendment. The amendment simply limits State power in respect to suffrage at State elections by prohibiting discrimination in the enjoyment of the elective franchise on account of race, color, or condition. The right to vote in its own election can be conferred only by the State. No one, therefore, but the State can 'deny or abridge' the right to vote. The amendment is therefore properly addressed to the State. Individuals may by unlawful force or fraud prevent an otherwise lawful voter from voting. But it would simply be an act of lawless violence. The right of suffrage would not be denied or abridged. Individuals cannot deny or abridge the right of suffrage, for they cannot confer it. It is a right which is secured by, and dependent upon, law. . . . Both the Fourteenth and the Fifteenth Amendments are addressed to State action through some channel exercising the power of the State." Karem *v.* U. S., (1903) 121 Fed. Rep. 258.

[5] (1875) 92 U. S. 214.

[6] (1903) 190 U. S. 127.

[7] (1882) 106 U. S. 640.

[8] (1887) 120 U. S. 678.

[9] (1875) 92 U. S. 542, 554.

[1] (1892) 146 U. S. 1.

ler,[2] and *Swafford v. Templeton,*[3] the origin of suffrage was fully discussed. The language used in the early case of *Minor v. Happersett,*[4] which declared that suffrage originated solely in the States, was modified to the extent of declaring that the right to vote for members of Congress and for presidential electors had its origin not in any State legislation, but in the Constitution of the United States.

Effect on State constitutions.

In the case of *Neal v. Delaware,*[5] it was declared that the XV Amendment annulled the word "white" in the State constitution of Delaware as a qualification of suffrage. The Supreme Court, in referring to this, said, in the case of *Ex p. Yarbrough,*[6] that there are cases in which the XV Amendment substantially confers the right to vote on the negro, although it gives him no affirmative right; as where it annuls the word "white" in the State constitution of Delaware.

Right to restrict suffrage generally.

But it by no means follows from this prohibition of a discrimination on the sole ground of race, color, or previous condition of servitude, that any citizen of the United States is entitled to vote by reason of his color. The decisions cited in connection with the XIV Amendment, the rulings of which are equally applicable to the XV Amendment, all hold that the States may impose reasonable qualifications upon suffrage, and that if those qualifications are not based on race, color, or previous condition of servitude, but are applicable to all citizens alike,

[2] (1900) 179 U. S. 58.
[3] (1902) 185 U. S. 487.
[4] (1874) 21 Wall. (U. S.) 162.
[5] (1880) 103 U. S. 370.
[6] (1884) 110 U. S. 651.

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they are within the power of the States and beyond the reach of congressional legislation.

Interpretation as of date of adoption.

We may well conclude the discussion of this chapter with the language of the Supreme Court of the United States in the case of *Mattox v. U. S.*,[7] as follows: "We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted, *not as reaching out for new guaranties of the rights of the citizen, but as securing to every individual such as he already possessed, . . . such as his ancestors had inherited and defended since the days of Magna Charta.*"

[7] (1895) 156 U. S. 237.

CHAPTER VI.

OF THE PROTECTION OF CITIZENS ABROAD.

Provisions of the statutes — procedure.

THE Federal statutes[8] provide that all naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of person and property which is accorded to native-born citizens. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reason of such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen; and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate his release; and all the facts and proceedings relative thereto shall, as soon as possible, be communicated by the President to Congress. The means contemplated by the two sections above quoted would be in the nature of diplomatic negotiations between the government of the United States and the foreign government involved, and would be conducted through the secre-

[8] Rev. Stat. U. S., Secs. 2000, 2001; 1 Fed. Stat. Annot. 789.

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tary of state subject to rules and methods of procedure which need not be set forth in a volume of this character. It goes without saying that the same measure of protection will be extended by the government to native-born citizens abroad as is provided for naturalized citizens.[1]

[1] "In regard to the protection of our citizens in their rights at home and abroad we have no law which divides them into classes, or makes any difference whatever between them. A native and a naturalized American may, therefore, go forth with equal security over every sea and through every land under heaven, including the country in which the latter was born." Right of Expatriation, (1859) 9 Op. Atty.-Gen. 360. See also *In re* Look Tin Sing, (1884) 21 Fed. Rep. 907.

Citizens by birth and naturalized citizens who reside abroad have the same right to protection of the government, and stand upon the same footing in all other respects. Expatriation — Foreign Domicile Citizenship, (1873) 14 Op. Atty.-Gen. 295.

CHAPTER VII.

OF EXPATRIATION, ALIENS, AND WHO MAY NOT BECOME CITIZENS.

EXPATRIATION.

A fundamental American doctrine.

THE doctrine of expatriation, or the right of a citizen formally to renounce allegiance to his country, and assume citizenship in a country of his adoption, is one that has been steadily advocated by the American people from the foundation of their government.[2] It was one of the principal causes of the War of 1812 with Great Britain.

Statutory provisions.

Perhaps no better exposition of the American view can be found than in that section of the Revised Statutes of the United States which declares the right as follows (Section 1999):

"*Whereas* the right of expatriation is a natural

2 "In this country, expatriation is conceived to be a fundamental right. As far as the principles maintained and the practice adopted by the government of the United States is evidence of its existence, it is fully recognized. It is constantly exercised, and has never in any way been restrained." Stoughton *v.* Taylor, 2 Paine (U. S.) 661.

The statement has been made by the United States Supreme Court that "the doctrine of allegiance . . . rests on the ground of a mutual compact between the government and the citizen or subject, which, it is said, cannot be dissolved by either party without the concurrence of the other." Inglis *v.* Sailor's Snug Harbor, (1830) 3 Pet. (U. S.) 124. See also Talbot *v.* Janson, (1795) 3 Dall. (U. S.) 162, *et seq.*, where Mr. Justice Iredell sets forth at length reasons why concurrence on the part of the government is essential. Under Rev. Stat. U. S., Sec. 1999, quoted below, however, it has been held that assent on the part of the government re-

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and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: therefore any declaration, restriction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

The doctrine sustained.

This right to renounce citizenship declared by Congress has been affirmed and sustained in many decisions.[3] A native-born citizen of the United

nounced does not obtain in the United States. Jennes *v.* Landes, (1897) 84 Fed. Rep. 74; *In re* Look Tin Sing, (1884) 21 Fed. Rep. 907; Pequignot *v.* Detroit, (1883) 16 Fed. Rep. 214.

[3] Right of Expatriation, (1859) 9 Op. Atty.-Gen. 356; Pequignot *v.* Detroit, (1883) 16 Fed. Rep. 214; *In re* Look Tin Sing, (1884) 21 Fed. Rep. 908; Elk *v.* Wilkins, (1884) 112 U. S. 107; Green *v.* Salas, (1887) 31 Fed. Rep. 113; Boyd *v.* Nebraska, (1892) 143 U. S. 161; Fong Yue Ting *v.* U. S., (1893) 149 U. S. 715; Jennes *v.* Landes, (1897) 84 Fed. Rep. 74; *In re* Rodriguez, (1897) 81 Fed. Rep. 354; U. S. *v.* Wong Kim Ark, (1898) 169 U. S. 704; Ruckgaber *v.* Moore, (1900) 104 Fed. Rep. 948.

"The Act of July 27, 1868, ch. 249, declaring the right of expatriation to be a natural and inherent right of all people, and reciting that 'in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship,' while it affirms the right of every man to expatriate himself from one country, contains nothing to

States who has chosen to expatriate himself and has been naturalized in a foreign country is regarded as an alien, and he cannot again acquire naturalization except by conforming to the laws of the United States providing for the admission of aliens to citizenship.[4]

Who may renounce citizenship.

The section comprehends citizens of our own country as well as of other countries. Where, therefore, a citizen of the United States emigrates to a foreign country, and there formally renounces his American citizenship, our government accepts the act as one of expatriation. It also recognizes the right of even a naturalized citizen to resume his original citizenship under such conditions as his government requires.[5]

Proof of expatriation.

Proof of expatriation is to be made like that of any other fact for which there is no prescribed form of proof; that is, by any evidence that will convince the judges.[6] A woman born in the United States, of American parents, married a Spanish subject residing here but never naturalized, removed to Spain, and lived there until her husband's death; it was held that such removal and residence in Spain were not evidence on her part of an intention to

enable him to become a citizen of another, without being naturalized under its authority. 15 Stat. 223; Rev. Stat., Sec. 1999." Elk *v.* Wilkins, (1884) 112 U. S. 107. See also Right of Expatriation, (1859) 9 Op. Atty.-Gen. 360. *Compare* Expatriation — Foreign Domicile Citizenship, (1873) 14 Op. Atty.-Gen. 295.

[4] Expatriation — Foreign Domicile Citizenship, (1873) 14 Op. Atty.-Gen. 295.

[5] Green *v.* Salas, (1887) 31 Fed. Rep. 112.

[6] Belcher *v.* Farren, (1891) 89 Cal. 73; Green *v.* Salas, (1887) 31 Fed. Rep. 112.

"The general evidence of expatriation is actual emigration, with

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expatriate herself, and that she still remained a citizen of the United States.[7]

Power of Congress — limitation of protection.

It has been held that the section of the Revised Statutes above quoted is, like any other act of Congress, subject to alteration by Congress whenever the public welfare requires it. The right of protection which it confers is limited to citizens of the United States. Chinese persons, not born in this country, have never been recognized as citizens of the United States or authorized to become such.[8]

Confused citizenship — Contzen's case.

A singular case of confused citizenship arose in the case of *Contzen v. U. S.*[9] Texas was an independent State when admitted into the Union. The effect of her admission was to make all the citizens of Texas citizens of the United States. Such persons as then resided in Texas and were not then naturalized as citizens of Texas were relegated to the United States naturalization laws. Contzen was a minor alien separated from his parents, who had not been made citizens of the United States. He was living in Texas at the time of the admission of the State, and continued to reside there, not deeming any further naturalization necessary; but, the point being raised against him, it was held that, never having been a citizen of Texas and consequently never having become a citizen of the United States, he had no status in the Court of Claims of the United States.

other concurrent acts showing a determination and intention to transfer his allegiance." Stoughton *v.* Taylor, 2 Paine (U. S.) 661.

[7] Preto's Case, (1862) 10 Op. Atty.-Gen. 321.

[8] Fong Yue Ting *v.* U. S., (1893) 149 U. S. 716. See also *In re* Rodriguez, (1897) 81 Fed. Rep. 354.

[9] (1900) 179 U. S. 191.

Aliens.

Right to exclude aliens.

The right to exclude or expel aliens or any class of undesirable strangers has been upheld by the Supreme Court as an inherent right of sovereignty.[1] So also the Act of Congress prohibiting the bringing in of aliens to perform labor has been held to be constitutional.[2] And in the case of *U. S. v. Williams,* deporting an alien who had illegally entered the United States was declared to be not against the XIV Amendment, and the Alien Immigration Act of

[1] Fong Yue Ting *v.* U. S., (1893) 149 U. S. 698; Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 651; Chinese Exclusion Case, (1889) 130 U. S. 581.

"It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the national government, to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the President and Senate, or through statutes enacted by Congress." Nishimura Ekiu *v.* U. S., (1892) 142 U. S. 659.

[2] Lees *v.* U. S., (1893) 150 U. S. 476, where the court said: "Given in Congress the absolute power to exclude aliens, it may exclude some and admit others, and the reasons for its discrimination are not open to challenge in the courts. Given the power to exclude, it has a right to make that exclusion effective by punishing those who assist in introducing, or attempting to introduce, aliens in violation of its prohibition. The importation of alien laborers, who are under previous contract to perform labor in the United States, is the act denounced, and the penalty is visited not upon the alien laborer — although by the amendment of February 23, 1887, 24 Stat. 414, c. 220, he is to be returned to the country from which he came — but upon the party assisting in the importation. If Congress has power to exclude such laborers, as by the cases cited it unquestionably has, it has the power to punish any who assist in their introduction."

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Congress of 1903, which provides for the deportation of anarchists, was sustained as constitutional.[3]

Aliens defined.

An alien is a foreigner, a person resident in one country but owing allegiance to another. In England he is one born out of the dominions and allegiance of the King. In the United States he is one who is born out of the jurisdiction and allegiance of the United States, and who has not been naturalized under the Constitution and laws of the United States or of any one of them.[4]

Alien friends — privileges and disabilities in general.

An alien friend is one whose country is at peace with the country where he resides. While he is domiciled in this country he is entitled to the protection of its laws, and owes to it, in return for that protection, temporary and local obedience, which continues during the period of his residence. He is even entitled to the benefits of the protection granted by the XIV Amendment to the Constitution of the United States. But he is not a citizen. He is subject to the laws of the land, may be tried for crime, and may even be guilty of treason in giving aid and comfort to the enemies of this country.[5] He has a

[3] "Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application." U. S. *v.* Williams, (1904) 194 U. S. 289.

[4] 2 Am. and Eng. Encyc. of Law (2d ed.) 64.

[5] Carlisle *v.* U. S., (1872) 16 Wall. (U. S.) 147.

right to labor and engage in trade, that right being implied in the right to reside in the country. He may sue and be sued in the proper courts. He may by statute have the benefit of the insolvent laws and the poor laws of his temporary domicile, if they so provide. He may obtain a patent, may file a caveat, may register a trade mark and protect it by suit, and to a certain extent he may enjoy the benefit of the copyright laws. He may serve as executor or administrator, unless prohibited by statute, and may be a corporator or a trustee of a corporation. While not liable to enlistment for military service, he may voluntarily waive that exemption and enlist; in that case he is subject to all the liabilities incurred by a citizen soldier, and cannot escape them on the ground that he is an alien. But an alien may not vote or hold any political office, State or Federal, or be an officer of a county, a city, or a court, or serve as juror. Alienage constitutes a disqualification for practicing as an attorney at law.

An alien "is none the less an alien because of his having a commercial domicile in this country. While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country, and such of his property as is here during his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he cannot reënter the United States in violation of the will of the government as expressed in enactments of the law-making power." Lem Moon Sing *v.* U. S., (1895) 158 U. S. 547.

"This national character which a man acquires by residence may be thrown off at pleasure, by a return to his native country, or even by turning his back on the country in which he has resided, on his way to another. To use the language of Sir W. Scott, it is

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Rights as to real property at common law.

The rights of an alien pertaining to his property may be briefly stated as follows: At common law he may take real estate by act of the parties or by deed or grant, or devise, or by other act of purchase, but cannot hold it except upon such terms as may be prescribed by the State. An alien therefore takes a defeasible estate good against all excepting the State, and good against it until it institutes proceedings and obtains a judgment by inquest of office or office found, or some legislative act equivalent thereto. But an alien does not acquire an estate by operation of law, as by descent; for since the law will be deemed to do nothing in vain, it will not cast descent upon one who cannot by law hold the estate. When an alien seized of real estate dies intestate, as he has no inheritable blood he cannot have any legal heirs, and so cannot transmit the estate by descent, and as the law will not deem it to be in abeyance except in case of absolute necessity, it vests immediately in the State without office found. Alienage in a mediate ancestor would interrupt the descent between the persons who are capable of taking and transmitting real estate by descent. An alien is not entitled to curtesy. Alienage in the husband or wife

an adventitious character gained by residence, and which ceases by nonresidence. It no longer adheres to the party from the moment he puts himself in motion, *bona fide*, to quit the country *sine animo revertendi*. (The Indian Chief, 3 Rob. Adm. 17.) The reasonableness of this rule can hardly be disputed. Having once acquired a national character by residence in a foreign country, he ought to be bound by all the consequences of it, until he has thrown it off, either by an actual return to his native country or to that where he was naturalized, or by commencing his removal, *bona fide*, and without an intention of returning." The Venus, (1814) 8 Cranch (U. S.) 280.

bars the wife from claiming dower. Such are, in general terms, the common-law rulings concerning aliens.

Statutory modifications.

In the United States the common-law doctrine concerning the rights of aliens has been greatly modified by statutes. In nearly all of the States statutes have been enacted by which the rights of aliens are defined, and in many instances resident aliens are placed on the same footing as natural born citizens, touching the acquisition, holding, and transmission of property, both real and personal. In some of the States the same liberal policy has been pursued toward nonresident aliens, while in others these privileges are accorded with restrictions, and in some cases denied altogether. It will be necessary for the student interested in this question of the rights of an alien in real or personal property, in any particular State, to examine the statutes and decisions of that State relating to the subject.

Mineral lands.

Under statutes of the United States all mining lands and territories belonging to the United States are open for the purpose of exploration and purchase to citizens of the United States, and to those who have declared their intention to become citizens; and all such persons who have discovered mineral lands and made location according to law have the exclusive right of possession thereof.

Rights as to personalty.

At common law, the disability of aliens in respect to the ownership of real estate did not extend to the case of personal property, and they were capable of acquiring, holding, and transmitting movable property in like manner as citizens, and might bring suit for the protection and recovery of such property.

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The statutes regulating the rights of aliens concerning personal property have generally been merely declaratory of the common-law principle.

Taxation.

An alien is as liable to taxation as is a citizen, since the right to tax results from the general protection afforded to himself and his property.

Treaties.

The status of citizens of one country residing in or traveling through foreign countries is frequently the subject of treaties between their respective nations; such treaties, when made, are the supreme law of the land, and any State law denying to an alien the right secured by such a treaty would be unconstitutional, null, and void.

Alien enemies — privileges and disabilities in general.

An alien enemy is one who owes allegiance to an adverse belligerent. He has no political rights. He may remain in the country at war with his own, and, when not chargeable with actual hostility or crime, has an implied license to remain until ordered out of the country, and on leaving it he is allowed to remove his goods and effects, and is protected in his other rights. During the pendency of war his rights are in abeyance. An alien enemy is not permitted to prosecute suits in court, and any such suit pending abates, and the right of action is suspended, until the cessation of hostilities. But while he may not sue, he may be sued, and his property is subject to legal process, and in such case he may make defense in person or by counsel.

All intercourse between citizens of two hostile nations, except such as may be permitted by the authorities conducting the war, is prohibited while war is flagrant between their respective countries. This includes any act or contract which tends to increase

Transactions with hostile nation or its citizens.

the resources of the enemy, or any kind of trading or commercial dealing or intercourse. But the tendency of the law of nations of modern times is to exempt individuals and private contracts from injury or restraint in consequence of war between the governments of the contracting parties. The effect of an outbreak of hostilities is to revoke agencies in the country of the enemy, for general purposes, during the pendency of the war; but an agency to preserve or collect property may be created, and war does not necessarily revoke a special agency established before it began.[6]

Statutory provisions as to alien enemies.

The Federal statutes on the subject of aliens[7] provide that, whenever war is declared between the United States and a foreign government, and in certain other contingencies, all natives, citizens, denizens, or subjects of the hostile nation, being males of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, and removed. Power is given to the President, by proclamation or other public act, to direct the conduct to be observed on the part of the United States toward aliens who become so liable, or to provide for their removal, and generally to establish regulations concerning them for the public safety. Provision is also made, in case the individual is not chargeable with actual hostility or crime against the public safety, for allowing him to recover and dis-

[6] The authorities in support of the above general statements will be found very fully set forth in the Am. and Eng. Encyc. of Law (2d ed.), title "Aliens," Vol. 2, pp. 64–90.

[7] See 1 Fed. Stat. Annot. 435.

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pose of and remove his goods and effects, and to depart within reasonable ti to be ascertained as prescribed.[8]

Jurisdiction and powers of courts.

After the presidential proclamation, jurisdiction is given to the federal courts to cause any alien who lingers in the jurisdiction to be apprehended and conveyed before the court. The courts are empowered to cause such alien to be removed or to give security for good behavior, or otherwise to restrain him, conformably to the proclamation or regulations established, and to imprison or otherwise secure him until these orders are performed. Power is given to the marshal of the district in which such alien is apprehended to carry out the orders of the court.

Right to hold real estate in Territories.

To an Act of Congress passed March 2, 1897,[9] fixing the rights of aliens to hold and own real estate in the Territories of the United States as defined under that Act, the student is referred for the particular conditions upon which the alien may hold the same.

Forfeiture of citizenship by desertion.

It is also provided by a Federal statute that all persons who deserted the military and naval service of the United States and did not return thereto or report themselves to a provost marshal within sixty days after the issuance of a proclamation by the President dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship as well as their right to become citizens; and that such deserters are forever incapable of holding any office of trust or profit

[8] Rev. Stat. U. S., Secs. 4067, 4068; 1 Fed. Stat. Annot. 436.
[9] 29 Stat. at L., c. 363, p. 618; 1 Fed. Stat. Annot. 437.

in the United States or of exercising any rights of citizens thereof.[1] But the provisions of this section can take effect only upon conviction by a court martial.[2] Another section of the Revised Statutes[3] provides that every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled or goes beyond the limits of the United States with intent to avoid a draft in the United States service lawfully ordered, shall be liable to all the penalties and forfeitures of the section last above quoted. This law was enacted March 3, 1865, and is believed to be still in force. The penalties named by it can be enforced only after conviction by court martial.[4]

Immigration of Chinese.

Chinese Exclusion Acts.

Besides the disqualifications above enacted, a series of laws beginning with an Act dated May 6, 1882, and ending with the Act of April 2, 1902,[5] has been passed by Congress suspending the immigration of Chinese. By the terms of these sundry acts, Chinese immigration has been forbidden indefinitely. The laws prescribing the terms upon which Chinese may come to this country have been made very stringent, and under the authorities cited in

[1] Rev. Stat. U. S., Sec. 1996; 1 Fed. Stat. Annot. 788.

[2] Kurtz *v.* Moffitt, (1885) 115 U. S. 501.

[3] Rev. Stat. U. S., Sec. 1998; 1 Fed. Stat. Annot. 788.

[4] Kurtz *v.* Moffitt, (1885) 115 U. S. 501.

[5] 22 Stat. at Large, ch. 126, 58; 23 Stat. L. 115, ch. 220; 25 Stat. L. ch. 1015, p. 476; 25 Stat. L. 504, ch. 1064; 27 Stat. L. 25, ch. 60; 28 Stat. L. 7, ch. 14; 28 Stat. L. 581, Resolution 19; 31 Stat. L. 1093, ch. 845; 32 Stat. L. 176, ch. 641. See 1 Fed. Stat. Annot. 754, title "Chinese Exclusion."

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connection with the subject of aliens their exclusion and deportation by these laws have been sustained.[6] Under their operation it is impossible for the Chinese to come to this country or to be naturalized, and this may be said to be the only limitation placed upon immigration to the United States from any great nation of the globe.

Arguments for repeal.

The wisdom of these laws has been gravely questioned. Sundry influences have produced this legislation, chiefly that of certain classes in the extreme West who have feared the result of competition with the Chinese. On the other hand, powerful influences are at work to induce the repeal of these exclusive measures. No one will question the propriety of limiting the political rights of alien and antagonistic people who are permitted to enter this country; but the conditions of American labor are such that the need of additional labor is sorely felt, especially in agricultural sections, whence of late years immense numbers of laborers have flocked to the cities. Throughout large sections of the South and West a great and crying need of labor is felt to-day. The industry, thrift, and humble contentment of the Chinese would doubtless furnish a most desirable labor element to many sections in which laborers are scarce. A critic of American institutions has cynically said that "the idea that every citizen is a sovereign has been cultivated in the United States until no citizen is content to be a servant." Whether that statement is exaggerated or not, it is certain that a great and crying need of the nation at present is

[6] A convenient collection of these laws and the decisions under them may be found in 1 Fed. Stat. Annot., pp. 754–783.

some class of laboring men which shall not deem itself the natural antagonist of its employer. We sorely need a laboring class not composed of individuals who aspire to higher education, political prominence, social importance, and even the presidency of the United States.

When the nation becomes convinced, by its long trouble with labor problems such as have vexed it for several decades, that the Chinese population possesses what it needs, and that the Chinese are even less objectionable than many elements now in the country, we may look for a repeal of the Chinese exclusion laws. With those repealed America will in truth be the asylum of the oppressed of all nations.

APPENDIX A.

List of cases decided by the United States Supreme Court under the XIV Amendment to the Constitution, arranged in the order of their rendition.

Slaughter-House Cases, (1872) 16 Wall. (U. S.) 36
Bradwell *v.* Illinois, (1872) 16 Wall. (U. S.) 133
Bartemeyer *v.* Iowa, (1873) 18 Wall. (U. S.) 133
Minor *v.* Happersett, (1874) 21 Wall. (U. S.) 162
Walker *v.* Sauvinet, (1875) 92 U. S. 90
Kennard *v.* Louisiana, (1875) 92 U. S. 480
U. S. *v.* Cruikshank, (1875) 92 U. S. 543
Munn *v.* Illinois, (1876) 94 U. S. 113
Hall *v.* De Cuir, (1877) 95 U. S. 485
Pennoyer *v.* Neff, (1877) 95 U. S. 714
Davidson *v.* New Orleans, (1877) 96 U. S. 97
Richmond, etc., R. Co. *v.* Richmond, (1877) 96 U. S. 521
Kirtland *v.* Hotchkiss, (1879) 100 U. S. 491
Strauder *v.* West Virginia, (1879) 100 U. S. 303
Virginia *v.* Rives, (1879) 100 U. S. 313
Ex p. Virginia, (1879) 100 U. S. 339.
Missouri *v.* Lewis, (1879) 101 U. S. 22
Neal *v.* Delaware, (1880) 103 U. S. 370
Kelly *v.* Pittsburgh, (1881) 104 U. S. 78
Fox *v.* Cincinnati, (1881) 104 U. S. 783
Pace *v.* Alabama, (1882) 106 U. S. 583
U. S. *v.* Harris, (1882) 106 U. S. 629
Gross *v.* U. S. Mortgage Co., (1883) 108 U. S. 477
Civil Rights Cases, (1883) 109 U. S. 3
Louisiana *v.* New Orleans, (1883) 109 U. S. 285
Hurtado *v.* California, (1884) 110 U. S. 516
Ex p. Yarbrough, (1884) 110 U. S. 651
Hagar *v.* Reclamation Dist., No. 108, (1884) 111 U. S. 701
Elk *v.* Wilkins, (1884) 112 U. S. 94
Foster *v.* Kansas, (1884) 112 U. S. 201
U. S. *v.* Waddell, (1884) 112 U. S. 77
Barbier *v.* Connolly, (1885) 113 U. S. 27
Head *v.* Amoskeag Mfg. Co., (1885) 113 U. S. 9
Provident Sav. Inst. *v.* Jersey City, (1885) 113 U. S. 506

Soon Hing *v.* Crowley, (1885) 113 U. S. 703
Ex p. Reggel, (1885) 114 U. S. 642
Wurts *v.* Hoagland, (1885) 114 U. S. 606
Kentucky Railroad Tax Cases, (1885) 115 U. S. 321
Missouri Pac. R. Co. *v.* Humes, (1885) 115 U. S. 513
Campbell *v.* Holt, (1885) 115 U. S. 620
Brown *v.* Grant, (1886) 116 U. S. 207
Railroad Commission Cases, (1886) 116 U. S. 307
Presser *v.* Illinois, (1886) 116 U. S. 252
Boyd *v.* U. S., (1886) 116 U. S. 616
Royall *v.* Virginia, (1886) 116 U. S. 572
Walling *v.* Michigan, (1886) 116 U. S. 446
Arrowsmith *v.* Harmoning, (1886) 118 U. S. 194
Yick Wo *v.* Hopkins, (1886) 118 U. S. 356
Santa Clara County *v.* Southern Pac. R. Co., (1886) 118 U. S. 394
Philadelphia F. Assoc. *v.* New York, (1886) 119 U. S. 110
Schmidt *v.* Cobb, (1886) 119 U. S. 286
Hayes *v.* Missouri, (1887) 120 U. S. 68
Baldwin *v.* Franks, (1887) 120 U. S. 679
Barron *v.* Burnside, (1887) 121 U. S. 186
Church *v.* Kelsey, (1887) 121 U. S. 282
Spies *v.* Illinois, (1887) 123 U. S. 131
Sands *v.* Manistee River Imp. Co., (1887) 123 U. S. 288
Mugler *v.* Kansas, (1887) 123 U. S. 623
Pembina Consol. Silver Min., etc., Co. *v.* Pennsylvania, (1888) 125 U. S. 181
Redemption Bank *v.* Boston, (1888) 125 U. S. 60
Spencer *v.* Merchant, (1888) 125 U. S. 345.
Dow *v.* Beidelman, (1888) 125 U. S. 680
California *v.* Central Pac. R. Co., (1888) 127 U. S. 40
Ro Bards *v.* Lamb, (1888) 127 U. S. 58
Missouri Pac. R. Co. *v.* Mackey, (1888) 127 U. S. 206
Minneapolis, etc., R. Co. *v.* Herrick, (1888) 127 U. S. 210
Powell *v.* Pennsylvania, (1888) 127 U. S. 678
Mahon *v.* Justice, (1888) 127 U. S. 700
Kidd *v.* Pearson, (1888) 128 U. S. 1
Nashville, etc., R. Co. *v.* Alabama, (1888) 128 U. S. 96
Walston *v.* Nevin, (1888) 128 U. S. 578
Minneapolis, etc., R. Co. *v.* Beckwith, (1889) 129 U. S. 26
Kimmish *v.* Ball, (1889) 129 U. S. 222
Dent *v.* West Virginia, (1889) 129 U. S. 114
Huling *v.* Kaw Valley R., etc., Co., (1889) 130 U. S. 559
Freeland *v.* Williams, (1889) 131 U. S. 405
Cross *v.* North Carolina, (1889) 132 U. S. 131

Pennie *v.* Reis, (1889) 132 U. S. 464
Sugg *v.* Thornton, (1889) 132 U. S. 524
Louisville, etc., R. Co. *v.* Mississippi, (1890) 133 U. S. 587
Davis *v.* Beason, (1890) 133 U. S. 333
Palmer *v.* McMahon, (1890) 133 U. S. 661
Eilenbecker *v.* District Ct., (1890) 134 U. S. 31
Bell's Gap R. Co. *v.* Pennsylvania, (1890) 134 U. S. 232
Chicago, etc., R. Co. *v.* Minnesota, (1890) 134 U. S. 418
Minneapolis Eastern R. Co. *v.* Minnesota, (1890) 134 U. S. 467
Louisville, etc., R. Co. *v.* Woodson, (1890) 134 U. S. 623
Home Ins. Co. *v.* New York, (1890) 134 U. S. 594
Cherokee Nation *v.* Southern Kansas R. Co., (1890) 135 U. S. 641
In re Kemmler, (1890) 136 U. S. 436
York *v.* Texas, (1890) 137 U. S. 15
Crowley *v.* Christensen, (1890) 137 U. S. 91
Wheeler *v.* Jackson, (1890) 137 U. S. 245
Holden *v.* Minnesota, (1890) 137 U. S. 483
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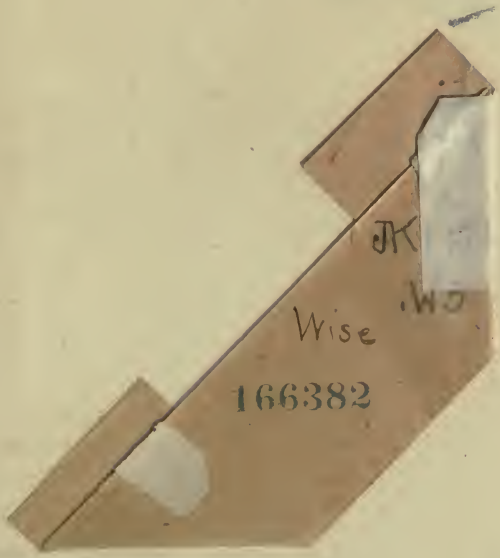
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